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DEI Task Force Update

March 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 February 26, U.S. Equal Employment Opportunity Commission ("EEOC") Chair Andrea Lucas issued a letter to chief executive officers, general counsel, and board chairs of the 500 largest employers in the United States to educate them about her views on the potential for race- and sex-based discrimination in corporate DEI programs. The letter asserts that the "bedrock American principle[]" of equality has been "under attack" by "movements and ideologies" that "demand equal outcomes over equal treatment" and "promote discrimination against certain races or groups." Chair Lucas writes, "we are

the *Equal* Employment *Opportunity* Commission, not the *Equitable* Employment *Outcomes* Commission." The letter states that the EEOC is committed to using "every available resource" to eradicate what it views as discriminatory practices in the workplace. In a press release regarding the letter, Chair Lucas, echoing Chief Justice Roberts in the *SFFA v. Harvard* admissions decision, stated that "[t]he only lawful way to stop discrimination on the basis of race or sex, is to stop discrimination on the basis of race or sex," and urged corporate leaders to "reject identity politics" as a solution to workplace issues.

On the same day, the EEOC issued a decision holding that Title VII permits federal employers to maintain sex-separated bathrooms, and similar intimate spaces, based on biological sex and does not require special exceptions for transgender employees, reversing a 2015 EEOC decision which held that federal agencies "must allow" trans-identifying employees access to the "opposite sex restroom." The case arose when a "male employee" of the U.S. Army began "identif[ying] as a woman" and requested access to female-designated bathrooms and locker rooms. The Army denied the request based on Executive Order 14168, which directed agencies to ensure that "intimate spaces" are designated by sex rather than identity. The EEOC reasoned that because of innate reproductive and physical differences between men and women, the sexes are not "similarly situated" when it comes to bathrooms and other intimate spaces where privacy expectations apply and, therefore, separating men and women under such circumstances is not discriminatory under Title VII. The EEOC also concluded that under the Supreme Court's 2020 decision in *Bostock v. Clayton County,* trans-identifying employees are entitled to equal treatment, not exemptions from generally applicable workplace rules, including rules to use the bathroom corresponding to one's biological sex. The EEOC's decision applies only to federal agencies subject to the EEOC's administrative complaint process and does not bind private sector employers or federal courts. In a LinkedIn post about the decision, Chair Lucas said that

"[w]hen it comes to bathrooms, male and female employees are not similarly situated. Biology is not bigotry." The case is *Selina S. v. Dep't of the Army*, EEOC Appeal No. 2025003976 (Feb. 24, 2026).

Beginning on March 1, 2026, the Fair Investment Practices by Venture Capital Companies Law ("FIPVCC") will require certain "venture capital companies" with broadly defined ties to the State to begin registering with the California Department of Financial Protection and Innovation ("DFPI"). By April 1, 2026, these covered entities must submit their first annual report, which will cover in-scope activities from 2025. The law mandates that these firms collect and report anonymized, aggregated demographic data on the founding teams of their portfolio companies, including information on race, ethnicity, gender identity, LGBTQ+ status, and disability status. While participation in the founder surveys is voluntary, the collected data will be published online by DFPI. Firms that fail to comply will be given a 60-day period to cure the deficiency before potentially facing penalties. In preparation for these new requirements, affected firms are advised to confirm their coverage under the law, identify their reportable 2025 venture capital investments, and implement processes for surveying founders and securely managing the data. For more information, please refer to the Gibson Dunn client alert on this topic.

On February 24, the United States Court of Appeals for the Sixth Circuit affirmed the dismissal of a putative-class action lawsuit alleging racially discriminatory grantmaking in violation of Section 1981 by Progressive Preferred Insurance, Progressive Casualty Insurance, and Circular Board. The defendants' program—which was discontinued after the Supreme Court's 2023 decision in *SFFA v. Harvard*—offered ten $25,000 grants to small businesses to help them buy a commercial vehicle and limited eligibility to Black-owned businesses.

In a 2-1 decision, Judge Andre Mathis, joined by Judge David McKeague, held that the lead plaintiff, a white commercial truck driver, lacked standing to challenge the defendants' grant program because he failed to submit an application for the grant. The Sixth Circuit adopted the plaintiff's two-contract theory, which distinguished between an "application-stage" contract and subsequent "grant-stage" contract, but held that the plaintiff's injury was "self-inflicted" because he never applied to the grant program and therefore could not establish that the defendants caused his injury. The court noted that the plaintiff did not plead any race-based barriers to entering into an "application-stage" contract or allege that the grant application required him to disclose his race or certify compliance with any race-based eligibility criteria before applying. Thus, the court reasoned that because the plaintiff chose not to submit his application, he never subjected himself to the allegedly discriminatory race-based criteria for the subsequent "grant-stage" contract. Judge Danny Boggs dissented, disagreeing with the majority's description of the plaintiff's injury as "self-inflicted" because the grant program "clearly discriminated" based on race and led to the plaintiff's injury of an "unequal contracting opportunity based on race." The case is *Nathan Roberts v. Progressive Preferred Insurance Co.*, No. 24-3454 (6th Cir. 2025).

On February 17, the EEOC sued Coca-Cola Beverages Northeast, Inc., alleging it engaged in unlawful employment practices on the basis of sex in violation of Title VII of the Civil Rights Act of 1964. The complaint alleges that Coca-Cola Northeast invited only female employees to an "employer-sponsored trip and networking event" at a casino resort, which featured a "social reception, team-building exercises and recreational activities," excusing them from their regular work duties and paying their normal wages. The complaint alleges that Coca-Cola Northeast's exclusion of male employees from attending and participating in the event constitutes a "denial of equal compensation, terms, conditions, or privileges of employment on the basis of sex." EEOC Chair Andrea Lucas posted about the suit on LinkedIn,

stating that “Title VII does not permit sex segregation and sex-based disparate treatment in privileges of employment like employer-sponsored events, trips, networking, and training.” The case is *EEOC v. Coca-Cola Beverages Northeast, Inc.*, No. 1:26-cv-00115 (D. N.H. 2026).

On February 6, the United States Court of Appeals for the Fourth Circuit vacated an injunction barring enforcement of Executive Orders 14151 (“Ending Radical and Wasteful Government DEI Programs and Preferencing”) and 14173 (“Ending Illegal Discrimination and Restoring Merit-Based Opportunity”). The Fourth Circuit previously stayed the injunction pending the resolution of the appeal. The plaintiffs (the National Association of Diversity Officers in Higher Education, the American Association of University Professors, and the Mayor and City Council of Baltimore Maryland), argued that the “Termination Provision” of EO 14151 and the “Certification Provision” and “Enforcement Threat Provision” of EO 14173 violate the First and Fifth Amendments. Those provisions require all agencies to (1) terminate all DEI-related positions, programs, and performance requirements, (2) include in every contract or grant award a provision that states the contractual counterparty or grant recipient does not operate unlawful programs promoting DEI, and (3) prepare a plan specifying measures to deter unlawful DEI programs, respectively.

The three-judge panel—Chief Judge Albert Diaz, Judge Pamela A. Harris, and Judge Allison J. Rushing—held that the plaintiffs lacked standing with respect to the Enforcement Threat Provision because the allegations “that they’ll be forced to restrict” their speech “or face penalties” “overstate[d]” the text of the provision. The court explained that the provision “focus[es] on internal government agency processes and programs and reporting to the President from his subordinates,” and that the plaintiffs are not in imminent danger of injury because they are not “agenc[ies] within the executive branch of government.” Turning to the Termination and Certification

Provisions, the court held that plaintiffs had standing but concluded that their facial challenges as to each were unlikely to succeed. The court held that plaintiffs' Fifth Amendment claim as to the Termination Provision was unlikely to succeed because the directive to terminate "equity-related" grants was not impermissibly vague. The court also found that plaintiffs' First Amendment challenge to the Certification Provision was also likely to be unavailing because the provision effectively asks plaintiffs only to "certify compliance with federal antidiscrimination law," and therefore does not burden "protected speech" because "plaintiffs have no protectable speech interest in operating" DEI programs that violate federal antidiscrimination law.

The court suggested that an as-applied challenge may be more likely to succeed than a facial challenge, if, for example, "the President, his subordinates, or another grantor misinterprets federal antidiscrimination law" in terminating a particular DEI program. And in a concurring opinion, Chief Judge Diaz emphasized that the court was presented with a "facial challenge," not the legality or termination of a particular DEI program, which "makes all the difference." He also stated that the evidence presented by the plaintiffs indicates that programs have been "terminated by keyword," and "valuable grants" have been "gutted in the dark." He concluded, "[f]or those disappointed by the outcome, I say this: Follow the law. Continue your critical work. Keep the faith. And depend on the Constitution, which remains a beacon amid the tumult."

On February 9, a group of anonymous law students and the EEOC filed a stipulation voluntarily dismissing a lawsuit the students filed in response to the EEOC's March 17 letters requesting information from twenty law firms. The lawsuit was filed after the EEOC sent requests to the law firms requesting information including the name, sex, race, GPA, and contact information for law students who applied for jobs since 2019. The EEOC stated that responding to the requests was voluntary, most law firms

"did not provide any of the requested information," and any information provided to the EEOC by law firms in response to the March 17 letters "did not include names, email addresses, phone numbers, or other personally identifying information of any law firm employee or applicant." The stipulation states that the EEOC "considers the matter of responding to those letters closed." The case is *Doe 1 et. al v. EEOC, et. al*, No. 25-cv-1124 (D.D.C. 2025).

On February 5, Judge John Ross of the U.S. District Court for the Eastern District of Missouri dismissed a lawsuit filed by the State of Missouri against Starbucks in which Missouri alleged that the company's DEI commitments were pretext to discriminate on the basis of race, gender, and sexual orientation. The court found that the State lacked standing, because it "did not point to even a single Missouri resident" who suffered an adverse employment action because they lacked Starbucks's "preferred racial or sex characteristics." The court dismissed the State's claims under both Title VII and the Missouri Human Rights Act. The case is *State of Missouri v. Starbucks Corp*., No. 4:25-cv-00165 (E.D. Mo. 2025).

On February 4, the EEOC filed a motion in the Eastern District of Missouri to enforce an administrative subpoena issued in its investigation of Nike for alleged violations of Title VII. The EEOC alleges that Nike engaged in unlawful employment practices by "engaging in a pattern or practice of disparate treatment against White employees, applicants, and training program participants," including by committing to allegedly unlawful "race-based workforce representation quotas," as evidenced by its published "2025 Targets." The EEOC subpoenaed information relating to layoff decisions, executive compensation policies and decisions tied to DEI metrics, demographic and pay data for people of color that was provided to Nike executives, and programs aimed at increasing the representation of racial and ethnic minorities in the workforce. The EEOC asserts that Nike provided "some but not all the information and documents required" and therefore failed to "fully comply" with the

subpoena. On February 12, 2026, the court ordered Nike to respond to the EEOC's motion by March 16, 2026.

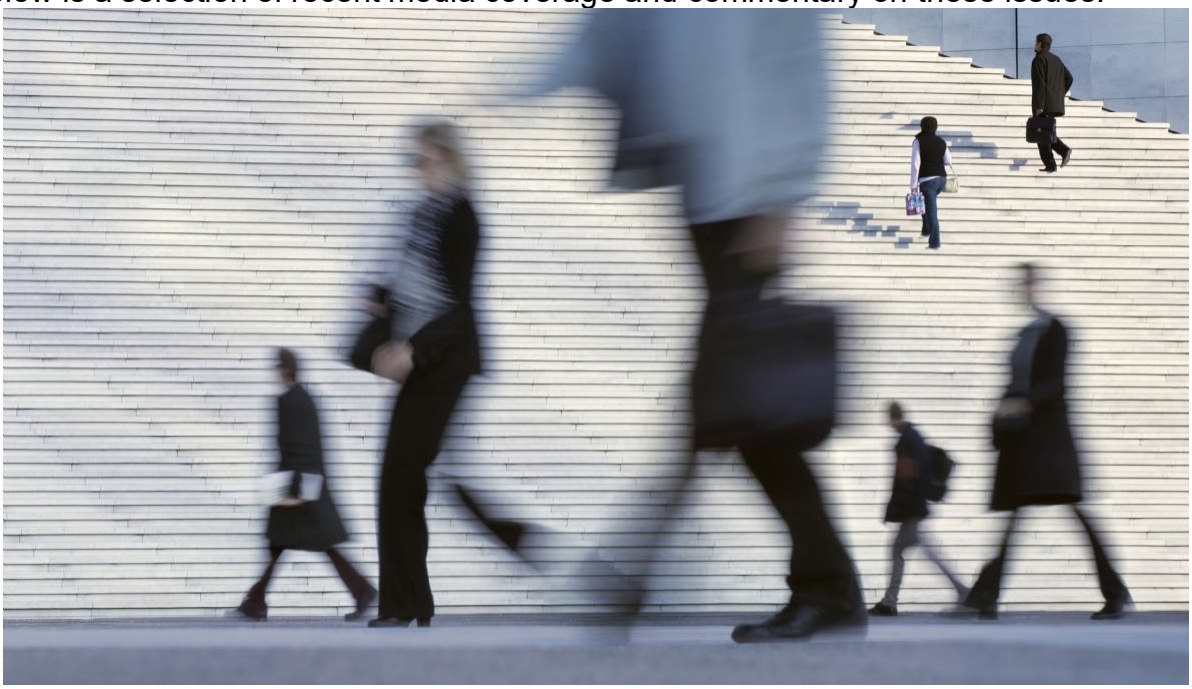
On January 30, 2026, Federal Trade Commission ("FTC") Chairman Andrew N. Ferguson issued a letter to 42 law firms warning that their participation in the Diversity Lab's Mansfield Certification program may expose them to potential antitrust liability. The letter alleges that to be eligible for Mansfield Certification, firms agree that at least 30% of the candidates they consider for leadership and promotion will come from underrepresented "racial and other groups" and agree to participate in monthly information-sharing calls with competitor firms to exchange strategies for achieving the program's DEI benchmarks. The letter states that such coordination among competing employers could violate Section 1 of the Sherman Act and Section 5 of the FTC Act by distorting competition for legal talent, suppressing wages and benefits, and depriving labor markets of independent decision-making. Although the letter does not allege unlawful conduct by recipient law firms, it advises the firms to re-evaluate their relationship with Diversity Lab and peer firms in light of their obligations under federal antitrust law. Last spring, Judge Beryl Howell of the U.S. District Court for the District of Columbia wrote that the Mansfield program does not violate anti-discrimination laws because it "expressly does not establish any hiring quotas or other illegally discriminatory practices" and requires "only that participating law firms consider attorneys from diverse backgrounds for certain positions." The case is *Perkins Coie LLP v. U.S. Dep't of Justice, et al*., No. 25-716 (D.D.C. 2025) and is on appeal at the D.C. Circuit Court of Appeals, No. 25-05241 (D.C. Cir.).

On February 12, 2026, Bloomberg reported that Diversity Lab founder Caren Ulrich Stacy announced that the organization will pause its Mansfield program. According to Ulrich Stacy, the organization's operating funds have been "substantially depleted by the need to respond to Executive Orders, DOJ law-firm lawsuits, and EEOC letters to law firms." Ulrich Stacy stated that the FTC's

January 30 letters led to hundreds of concerned emails from clients. Most of Diversity Lab's small team will be furloughed and the organization will operate with only one part-time employee and Ulrich Stacy herself.

Media Coverage and Commentary

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



- **Washington Post, "Colleges quietly cut ties with organizations that help people of color" (February 19)**: Todd Wallack of The Washington Post reports that, under pressure from the Trump Administration, many colleges have cut ties with organizations associated with assisting racial minorities. He reports that following the U.S. Department of Education's civil rights investigations into multiple colleges' partnerships with the PhD Project, which seeks to diversify the pipeline of aspiring business school professors, more than 100 colleges have ended their relationship with the organization. According to Wallack, the Administration initiated these investigations because the PhD Project limited participation at a prior conference to indigenous students and students of color, although the PhD Project has since opened its annual conference to students of any race. Wallack reports that 31 universities have reached agreements with the Trump Administration to identify their partnerships with organizations that "restrict participation based on race" and either end those partnerships or explain why they will not. Wallack also reports that 14

additional universities are still negotiating with the Administration to resolve their civil rights investigations related to the PhD Project.

- **Wall Street Journal, "DEI is a Threat to Americans' Health" (February 12)**: Stanley Goldfarb argues that DEI initiatives have contributed to a decline in medical education standards in the United States and urges the Trump Administration to reform the accreditation system for medical schools.
- **CNBC, "Corporate DEI Index Sees 65% Drop in Participation from Fortune 500 Companies" (February 4)**: CNBC's Laya Neelakandan reports that the Human Rights Campaign's Corporate Equality Index saw a 65% drop in Fortune 500 participation, from 377 companies in 2025 to 131 in 2026. Launched in 2002, the index rates companies on workplace social responsibility and equity. Neelakandan writes that the index has become a "conservative target" in recent years and has "seen more companies exiting its orbit."
- **K-12 Drive, "Education Department Doubles Down on Anti-DEI Efforts" (February 4)**: Naaz Modan of K-12 Drive reports that following a court order enjoining enforcement of the U.S. Department of Education's 2025 "Dear Colleague" letter regarding DEI initiatives, the Department stated to K-12 Drive that it would "continue to vigorously enforce Title VI to protect all students and hold violators accountable." The Department said that that it "has full authority under Title VI of the Civil Rights Act of 1964 to target impermissible DEI initiatives" and that it "continued to do so with or without the February 14th Dear Colleague Letter." Modan writes that the letter had been challenged in multiple lawsuits. She quotes the Vice President for Partnerships and Engagement at EdTrust, an educational equity nonprofit, as stating that even without the letter as a source of authority, the Administration has "other levers" to enforce Title VI, including through investigations.

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 American Bar Association ("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." On June 16, 2025, the ABA moved to dismiss the complaint for failure to state a claim. 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 again moved to dismiss. 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.

- **Latest update**: On January 21, 2026, the court granted in part and denied in part the ABA's motion to dismiss AAER's amended complaint. The court held that AAER had organizational standing based on Member A but not Member B, reasoning that Member A had plausibly alleged that he was ready and able to apply but was ineligible under the scholarship's published criteria for the 2025 cycle, rendering any application futile. Member B, on the other hand, was not applying to law school in 2025 and therefore could not apply for the scholarship during that cycle. The court also noted that the altered eligibility language for the 2026 scholarship cycle appeared to eliminate Member B's race-based ineligibility, further undermining the plaintiff's standing as to Member B. On the merits, the court held that AAER had plausibly pled a Section 1981 claim, rejecting the ABA's argument that the scholarship was a purely gratuitous program and not "contractual." Finally, the court declined to resolve the ABA's First Amendment affirmative defense at the motion-to-dismiss stage, because the defense depended on disputed facts that required further factual development through discovery.

- ***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, AAER 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 plaintiffs allege that the firm offers two scholarships 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 plaintiffs assert claims on behalf of their "members who are victims of Buckfire's discrimination." The plaintiffs seek 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.
    - **Latest update**: On January 20, 2026, the plaintiffs filed an amended complaint alleging that applicants are forced to select a race or ethnicity as part of the application process for the scholarships and providing new factual details regarding Member 1's denied application for one of the two scholarships. The defendant answered on January 30, 2026, denying that its scholarship programs discriminate, asserting that the scholarships are not contractual, and stating that all applicants are subject to the same requirements and selection criteria. The defendant denies that the "Race/Ethnicity" box on the application is a required field and denies that the plaintiffs' members suffered any cognizable injury. The defendant seeks dismissal of the action and requests attorneys' fees and Rule 11 sanctions for factual misstatements.

2. Employment discrimination and related claims

- ***Cooper 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 the 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. 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.

    - **Latest update**: On January 29, 2026, the parties stipulated to dismiss Lawrie's claims with prejudice, and the court ordered the dismissal on February 6, 2026. Cooper's claims remain pending. As of February 9, 2026, Cooper and the MLB have confirmed completion of The MLB stated that it intends to move for summary judgment.

- ***EEOC v. Battleground Restaurants*, No. 1:24-cv-00792 (M.D.N.C. 2024)**: On September 25, 2024, the EEOC filed a lawsuit against a sports bar chain, Battleground Restaurants, alleging the chain refused to hire men for its front-of-house positions, such as server or bartender jobs, in violation of Title VII. On August 15, 2025, the parties submitted a proposed consent decree intended as a "complete resolution of all matters in controversy." The consent decree would enjoin the defendants from "discriminating against any qualified male applicants who apply for nonmanagerial front-of-house positions," "steering applicants into positions, in whole or in part, because of their sex," and "disposing of or failing to maintain records relevant to applications for employment." The defendants agreed to make a payment of $1,111,300 to be distributed to a class of eligible claimants. The defendants also agreed to, among other requirements, "promulgate and maintain" policies that prohibit Title VII violations, require hiring practices be periodically reviewed, require all images in promotional materials depict at least one male server, and require application records be maintained for the duration of the decree. They also agreed to provide an annual in-person training to "all supervisory, management and Human Resources personnel" involved in restaurant hiring.

    - **Latest update**: On February 3, 2026, the court entered the parties' consent decree providing injunctive and monetary relief, appointing a claims administrator to identify eligible class members and distribute compensation, and requiring policy revisions, training, and reporting by the defendants. The decree

will remain in effect for three years and will automatically extend until all related disputes are resolved.

- ***Wang v. University of Pittsburgh et. al.*, No. 2:20-cv-01952 (W.D. Pa. 2022); No. 25-1816 (3d Cir. 2025)**: On June 14, 2023, a former employee filed this action against the University of Pittsburgh, the University of Pittsburgh Medical Center, and other individual defendants. The plaintiff alleged that the defendants violated Sections 1983 and 1981, Title VII, and the Pennsylvania Human Relations Act ("PHRA") by removing him as Director of the Clinical Electrophysiological Program after he published an article criticizing DEI considerations in the cardiology workforce. On March 29, 2024, the defendants moved for summary judgment, arguing that the plaintiff's claims under Section 1981, Title VII, and the PHRA failed because he did not engage in protected activity and could not establish a causal connection between any purported protected activity and an adverse action, and because the defendants had legitimate, non-retaliatory reasons for removing him from the role. The defendants further argued that the plaintiff's Section 1983 claims failed because he could not demonstrate a deprivation of federal rights by a defendant acting under the color of state law. On March 26, 2025, the court granted the defendants' summary judgment motion in full, finding that the University of Pittsburgh was not involved in any alleged adverse actions, that the plaintiff's removal from the role did not constitute state action, and that his comments during a private meeting with individual defendants did not constitute protected activity. On April 24, 2025, the plaintiff filed a notice of appeal with the Third Circuit, and briefing between the parties concluded on November 3, 2025.
    - **Latest update**: On January 5, 2026, the parties were notified that the appeal was scheduled for oral argument before the Third Circuit on March 6, 2026.

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

- ***Glass, Lewis & Co., LLC v. Ken Paxton*, No. 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 district court issued a preliminary injunction preventing the law from going into effect. On November 20, 2025, Glass Lewis filed a motion for summary judgment, and in response, the Attorney General filed a motion to defer or deny the motion as premature, arguing that the factual record needed to be complete to resolve Glass Lewis's claims. On December 5, 2025, the Attorney General filed an answer to Glass Lewis's complaint.

- **Latest update**: The court held oral argument on the motions regarding summary judgment on January 22, 2026. On February 2, 2026, the court deferred ruling on Glass Lewis' summary judgment motion and directed the parties to meet and confer regarding document production.

Legislative Updates

- Since the start of 2026, several states have introduced Proxy Advisor Transparency Acts, requiring proxy advisors to disclose when they recommend casting a vote for nonfinancial reasons including diversity, equity, and inclusion.
    - Kansas SB 375: The Kansas State Senate Judiciary Committee introduced Kansas Senate Bill 375 on January 22, 2026. The bill requires proxy advisors to disclose when they make recommendations "against company management" without conducting financial analysis, such as recommendations relating to ESG, DEI issues, and social credit and sustainability scores. The stated purpose of the bill is to prevent fraudulent or deceptive practices.
    - Mississippi SB 2676: Mississippi State Senator Josh Harkins (R) introduced Mississippi Senate Bill 2676 on January 19, 2026. Like Kansas's SB 375, the Mississippi Proxy Advisor Transparency Act requires proxy advisors to disclose when they make recommendations against company management without conducting financial analysis. Recommendations against company management include those related to ESG and DEI issues. Shareholders, companies, limited partners, and recipients of proxy advisory services aggrieved by violations of

the Act would be entitled to injunctive or declaratory relief.

- Oklahoma HB 4429: Oklahoma State Representative Kyle Hilbert (R) introduced Oklahoma House Bill 4429 on February 2, 2026. The bill requires proxy advisors to "provide, clear, factual disclosures when they recommend casting a vote for a nonfinancial reason" to "prevent fraudulent or deceptive acts and practices."

- West Virginia SB 417: State Senator Patricia Rucker (R) introduced West Virginia's Senate Bill 417 on January 15, 2026. The Act requires proxy advisors to disclose when proxy recommendations lack financial analysis. The bill's "legislative findings" observe that "proxy advisors have recommended votes against company management, including votes for shareholder proposals related to environmental, social, or governance (ESG) issues; diversity, equity, or inclusion (DEI) issues; and social credit and sustainability scores; but have not disclosed to clients that the recommendations were made without conducting a financial analysis to determine how these votes would affect shareholder value."

- Arizona HB 2135: On February 5, 2026, Arizona State Representative Michael Way (R) introduced Arizona House Bill 2135, which provides a private cause of action for private individuals to sue covered entities, such as public employers, universities, or other entities, which violate state or federal anti-DEI laws. The bill defines "covered entity" as "a corporation, organization, institution or agency in [Arizona] that is subject to a state or federal law prohibiting a diversity, equity and inclusion policy." "Diversity, equity, and inclusion policy," in turn, is defined as "a policy that is known and practiced as DEI, Critical Race Theory or Anti-Racism or" various other concepts, including the idea of "one race or sex [being] inherently superior to another race or sex" and the idea that "the United States is fundamentally racist."

- Florida SB 1566: Florida State Senator Nick DiCeglie (R) introduced Florida Senate Bill 1566 on January 9, 2026. The bill prohibits local governments from expending public funds for the purpose of promoting DEI initiatives. The bill also prohibits the government from contracting with private vendors for the provision of DEI training or education and requires termination of such contracts. The bill requires each local government to annually certify compliance and encourages individuals to call the governmental efficiency hotline established under the bill to report

violations under the section. Similar legislation was introduced in the House.

- New Hampshire HB 1788: On January 9, 2026, New Hampshire State Representatives Richard Nalevanko (R), Susan Deroy (R), Robert Wherry (R), Joe Sweeny (R), Jose Cambrils (R), Ross Berry (R), and Ruth Ward (R) introduced New Hampshire House Bill 1788. The bill would require courts to find contracts that include DEI-related provisions to be void as a matter of law and provides a private cause of action for taxpayers to sue public entities or state agencies for engaging in or failing to investigate allegations of contracts with DEI-related provisions. Taxpayers bringing suit would be entitled to declaratory relief, injunctive relief, and reasonable attorney's fees in any action brought against a district or administrative unit in violation of the act. The bill excludes the following from the definition of DEI: "activities of registered student organizations, mental or physical health services by licensed professionals, bona fide qualifications based on sex, or any attempt to comply in good faith with the Americans with Disabilities Act."

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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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