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DEI Task Force Update

April 13, 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 April 10, Acting Attorney General Todd Blanche announced that the Department of Justice ("DOJ") and IBM had reached a settlement in relation to a False Claims Act investigation into the company. Under the settlement, IBM agreed to pay $17,077,043 in exchange for resolution of allegations that the company "fail[ed] to comply with anti-discrimination requirements in its federal contracts due to practices the United States contends discriminated against employees and applicants for employment because of race, color, national origin, or sex." Specifically, the government alleged that "IBM took race, color, national origin, or sex into account when in making employment decisions," including by "using a diversity modifier that tied bonus compensation to achieving demographic targets," "alter[ing] interview criteria" through "diverse interview slates," "develop[ing]

race and sex demographic goals for business units," and "offer[ing] certain training, partnerships, mentoring, leadership development programs and educational opportunities only to certain employees, with eligibility, participation, access or admission limited on the basis of race or sex." IBM denies the allegations made against it.

In a press release announcing the settlement, DOJ acknowledged that the settlement is the first resolution secured by the Civil Rights Fraud Initiative, which was launched in May 2025. DOJ also noted that IBM "took significant steps entitling it to credit for cooperating with the government in its investigation," including by making "early disclosures of facts relevant to the government's investigation" and undertaking "voluntary remedial measures" such as the "termination and/or modification of various programs and practices at issue."

On March 26, President Trump issued an Executive Order titled "Addressing DEI Discrimination by Federal Contractors," which prohibits federal contractors and subcontractors from engaging in "racially discriminatory DEI activities," defined as "disparate treatment based on race or ethnicity" in recruitment, hiring, promotions, contracting, and programs. The order asserts that DEI activities "cause inefficiencies, waste, and abuse" by precluding merit-based principles and imposing artificial costs that are "inevitably passed on to the Federal Government." Within 30 days of the order, agencies must ensure that federal contracts include a specific clause requiring contractors to (1) refrain from "racially discriminatory DEI activities," (2) provide access to books and records to verify compliance with the clause, (3) acknowledge that noncompliance with the clause may result in contracts being canceled, terminated, or suspended, or in debarment of the contractor, (4) report any subcontractor conduct that may violate the clause, (5) notify the contracting agency if a subcontractor files suit that puts the clause's validity at issue, and (6) acknowledge that compliance with the clause is "material

to the Government's payment decisions for purposes of" the False Claims Act. In turn, the order directs the Attorney General to prioritize bringing False Claims Act actions against violating contractors and to promptly review qui tam actions. To facilitate agency implementation, the order directs the Federal Acquisition Regulatory Council to issue interim guidance within 60 days of the order, before formal regulatory amendments are completed. Separately, the Office of Management and Budget, in coordination with the Attorney General, the Assistant to the President for Domestic Policy, and the Chair of the EEOC, is directed to identify "economic sectors that pose a particular risk" of noncompliance and issue "best practices" guidance for those sectors. For more information on this order, please see our March 30 client alert.

On March 19, the U.S. Equal Employment Opportunity Commission ("EEOC") announced that it had reached a settlement with an Illinois chapter of Planned Parenthood to settle claims relating to the group's DEI practices. In a press release, the EEOC stated that it had found reasonable cause to believe that Planned Parenthood of Illinois violated Title VII by mandating that employees either participate in "affinity caucuses," which were purportedly segregated by race, or attend DEI-related training sessions, during which statements were allegedly made that the EEOC characterized as derogatory to white employees, including that white employees "do not feel racism the same way non-white patients feel," and that "white supremacy is exerted at every level of oppression." The EEOC also alleged that Black Planned Parenthood employees had access to time off that was denied to white employees. The group's general counsel, Michelle Wetzel, stated that "Planned Parenthood of Illinois has zero tolerance for bigotry, discrimination or harassment of any kind," and that "[t]he EEOC has issued their findings, and we have come to an agreement about a path forward that will allow us to continue providing critical health care services to our valued patients from Illinois and across the country."

On March 6, the DOJ filed the opening brief of its consolidated appeal before the U.S. Court of Appeals for the D.C. Circuit of four lower court decisions permanently enjoining enforcement of executive orders aimed at the law firms Perkins Coie, Jenner & Block, WilmerHale, and Susman Godfrey, and which accused those firms of engaging in unlawful DEI practices, ordered federal agencies to suspend security clearances for law firm employees, and restricted law firm employees' access to federal buildings. The DOJ argues that the executive orders are "simply the President's speech," and that courts cannot "tell the President how to handle national security clearances," "interfere with Presidential directives instructing agencies to investigate racial discrimination that violates federal civil rights laws," or "interfere with Presidential directives" regarding government building access based on racial-discrimination and national-security concerns. The DOJ previously moved on March 2 to voluntarily dismiss its consolidated appeal, but the next day, on March 3, moved to withdraw its motion for voluntary dismissal. In support of the motion to withdraw, the DOJ asserted that "it is the prerogative of" the government to pursue the appeal and that "there is no prejudice to [the plaintiffs] in the Court granting this motion." The court granted the government's motion to withdraw its motion to voluntarily dismiss the consolidated appeal.

On March 27, Perkins Coie, Jenner & Block, WilmerHale, and Susman Godfrey filed separate briefs, arguing that the executive orders violate the First Amendment by retaliating against protected conduct, discriminating based on viewpoint, and interfering with the right to associate with clients and petition the courts. They also contend that the orders violate the Fifth Amendment's Due Process Clause and equal-protection guarantee, the right to counsel under the Fifth and Sixth Amendments, and separation-of-powers principles. WilmerHale characterized the order targeting it as "riddled with constitutional defects" and "a direct assault" on the "the First Amendment, core separation-of-powers principles, and our adversarial justice system." Jenner & Block

described the series of executive orders as having "cast[] a chill over the entire legal profession." Perkins Coie called the order against it "indefensible," pointing to the DOJ's earlier attempt to voluntarily dismiss the appeal as evidence of its weakness. Susman Godfrey similarly argued that the government "barely defend[s] the order's brazen unconstitutionality," offering only "halfhearted technical objections." The DOJ's reply is due April 10, with oral argument scheduled for May 14. The cases are *Perkins Coie LLP v. U.S. Dep't of Justice, et al.*, No. 25-05241 (D.C. Cir. 2025), *Jenner & Block LLP v. U.S. Dep't of Justice, et al.*, No. 25-5265 (D.C. Cir. 2025), *Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Office of the President, et al.*, No. 25-5277 (D.C. Cir. 2025), and *Susman Godfrey LLP, et al., v. Exec. Office of the President, et al.*, No. 25-5310 (D.C. Cir. 2025).

On February 19, Brenna Jenny, Deputy Assistant Attorney General of the Civil Division of the DOJ, spoke at the Federal Bar Association's Qui Tam Conference as part of a panel entitled, "Illegal DEI as an FCA Trigger?" At the conference, Deputy Assistant Attorney General Jenny made statements reaffirming the DOJ's commitment to pursuing False Claims Act cases against federal contractors for violations of antidiscrimination laws. She discussed how, in DOJ's view, such violations can satisfy each element of a False Claims Act claim. With respect to falsity, Jenny noted that the mere existence of DEI programs does not trigger False Claims Act ("FCA") liability. Rather, according to Jenny, the falsity element may be satisfied when organizations pressure corporate management to make hiring and promotion decisions based on race or sex, or other improper characteristics. On materiality, Jenny explained that federal contractors are the government's chosen "partners," and juries would understand why violations of antidiscrimination laws by those partners are "material" to the government. She noted that scienter—the knowledge element of an FCA claim—can be proven directly, such as through a written directive to hire a certain number of people of a particular race, or indirectly, such as when hiring managers are pressured to hire more members of a particular group

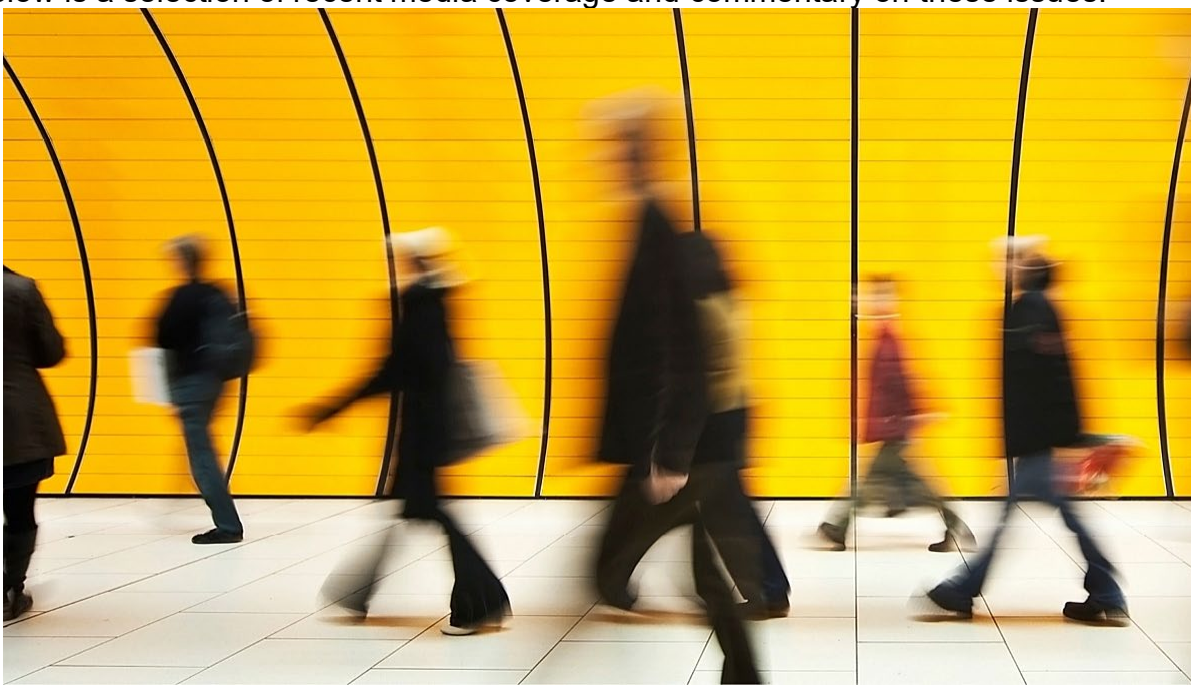
despite an official company policy against preferential treatment based on race or sex. Finally, Jenny identified five factors the DOJ would consider in deciding whether to pursue FCA cases based on DEI initiatives, including: (1) the defendant's cooperation; (2) the extent of the defendant's self-disclosure; (3) the duration and scope of the alleged misconduct; (4) whether senior leadership was involved; and (5) the extent of the defendant's commitment to remediation.

On January 21, February 3, and February 6, 2026, the Department of Education dismissed various appeals of federal district court decisions. The Department dismissed appeals in actions alleging that the Department's letters to universities and colleges threatening to revoke federal funding for pursuing certain DEI programs violated the First and Fifth Amendments of the U.S. Constitution and the APA. Three separate lawsuits were filed by various organizations, including the American Federation of Teachers, the National Education Association, the ACLU of New Hampshire, and the NAACP, in the U.S. District Court for the District of Maryland in February 2025, the U.S. District Court for the District of New Hampshire in March 2025, and the U.S. District Court for the District of Columbia in April 2025. Plaintiffs in these lawsuits challenged (1) the Department's "Dear Colleague Letter" issued on February 14, 2025; (2) the related FAQ document issued on February 28, 2025, and amended on April 9, 2025; (3) the EndDEI Portal launched on February 27, 2025; and (4) a certification demand issued on April 3, 2025. In August 2025, the U.S. District Court for the District of Maryland held that the Dear Colleague Letter and certification demand were unlawful. The Education Department appealed that decision, but on January 21, 2026, dismissed its appeal. Days later, on February 3 and 6, 2026, the Department entered joint stipulations of dismissal in the New Hampshire and Washington, D.C. cases, respectively. In each, the Department averred that it would not rely on the challenged letters in any enforcement actions, but reiterated the Department's authority to enforce Title VI generally. The cases are *National Education Association v. Department of*

Education, No. 1:25-cv-00091 (D.N.H. 2025), *NAACP v. Department of Education*, No. 1:25-cv-01120 (D.D.C. 2025); and *American Federation of Teachers v. Department of Education*, No. 1:25-cv-00628 (D. Md. 2025).

Media Coverage and Commentary

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



- **Law360, "Ex-EEOC Officials Tell [Companies] Law 'Has Not Changed' on DEI" (March 4)**: Patrick Hoff of Law360 reports that a group of 12 former officials from the EEOC and U.S. Department of Labor wrote an open letter to Fortune 500 companies, advising them not to abandon DEI initiatives in response to a recent letter from EEOC Chair Andrea Lucas to the same companies. The former officials' letter states that the "law has not changed" and certain DEI practices, such as collecting workforce demographic data, offering diversity training, and supporting employee resource groups, remain permissible under the law. Hoff writes that the letter cautions that scaling back such initiatives could make companies more vulnerable to discrimination lawsuits and undermine efforts to ensure workplaces remain free from discrimination.

- **Law360, "ABA Mulls Repeal of Embattled Law School DEI Standards" (February 24)**: Emily Sawicki of Law360 reports that the

American Bar Association's ("ABA") Council of the Section of Legal Education and Admissions to the Bar has voted to proceed with a plan to repeal its DEI standards for law schools, which have been suspended since February 2025. According to Sawicki, the ABA recommended repealing the standards after determining that its DEI accreditation requirements for law schools could "potentially conflict with legal requirements or interpretations of the law." Sawicki writes that Carla Pratt, Chair of the Council's standards committee, said in a statement that "[w]hile the repeal of [the DEI standards] would clarify accreditation expectations, it would not prevent law schools from incorporating the values reflected in the standard[s] into their institutional missions." Sawicki further reports that the plan will be discussed at the Council's May 2026 meeting, and that, in the meantime, the Council has extended the suspension of the standards through August 2027.

- **Wall Street Journal, "DEI Rules That Changed Corporate Boards Are Vanishing" (February 20)**: Theo Francis of the Wall Street Journal reports on companies and investors retreating from policies intended to increase racial and gender diversity on corporate boards, amid shifting legal and political pressures. He writes that a Wall Street Journal analysis of S&P 500 board data found that companies are adding women and minority directors no faster than they did a decade ago, before DEI policies became widespread. A PeopleReturn analysis, Francis reports, shows that approximately 80% of newly appointed directors at S&P 500 companies last year were white and approximately 75% were men. The article states that, according to the PeopleReturn analysis, the percentage of S&P 500 companies with a policy of considering gender, racial, and ethnic diversity in director selection dropped to about 25% last year, down from roughly 50% the year prior. According to Francis, this shift coincides with court decisions striking down requirements aimed at increasing board diversity, anti-DEI activism targeting diversity policies for corporate boards, and political scrutiny surrounding DEI initiatives.

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

- ***Roberts & Freedom Truck Dispatch v. Progressive Preferred Ins. Co., et al.*, No. 23-cv-1597 (N.D. Ohio 2023), on appeal 24-3454 (6th Cir. 2025)**: On May 21, 2024, the U.S. District Court for the Northern District of Ohio dismissed a challenge to Hello Alice's grant program that awards funding to Black entrepreneurs to support their small businesses in Roberts & Freedom Truck Dispatch v. Progressive Preferred Ins. Co., et al., No. 23-cv-1597 (N.D. Ohio 2023). The plaintiffs—the owner of a commercial trucking small business who started an application for the defendant's "driving small business forward" grant program—argued that Hello Alice's program was a discriminatory contract in violation of Section 1981. The court accepted the defendants' argument that the plaintiffs lacked Article III standing because they failed to allege any injury in fact. The court noted that the application period for the grant the plaintiffs claimed to want to apply for had already closed by the time they filed their lawsuit, and the plaintiffs did not allege that the defendants would offer a grant with similar race-based eligibility criteria in the future. The case has garnered significant attention, with amicus curiae briefs from the EEOC, the Southern Poverty Law Center, the Lawyers' Committee for Civil Rights Under the Law, the National Hispanic Bar Association, and Asian Americans Advancing Justice. On May 23, 2024, the plaintiffs appealed to the Sixth Circuit.
    - **Latest update**: On February 24, 2026, the Sixth Circuit affirmed the lower court's dismissal, holding that the plaintiff, a white commercial truck driver, lacked standing to challenge the defendants' grant program because the plaintiff never applied to the grant program and therefore could not establish that the defendants caused his injury. Judge Danny Boggs dissented, reasoning that the grant program "clearly discriminated" based on race and led to the plaintiff's injury of an "unequal contracting opportunity based on race."
- ***Students for Fair Admissions v. Trustees of the Estate of Bernice Pauahi Bishop*, No. 1:25-cv-00450 (D. Haw. 2025)**: On October 20, 2025, Students for Fair Admissions ("SFFA") sued Kamehameha Schools, a private school in Hawaii, alleging that it gives preference to "applicants of Hawaiian ancestry" in school applications. The complaint alleges that Kamehameha Schools "admits zero students who lack native Hawaiian ancestry" and violated Section 1981 when they denied admission to one of the plaintiffs, a non-native Hawaiian applicant. The complaint notes that Kamehameha's admissions policy was upheld by the Ninth Circuit in 2006 but argues that the decision was wrong and "certainly cannot shield" Kamehameha today as its reasoning was abrogated by the Supreme

Court's 2023 decision in SFFA v. Harvard. Thus, the plaintiffs allege that Kamehameha's admission policy fails strict scrutiny, is not a valid affirmative action plan, and violates Section 1981. The plaintiffs seek declaratory judgment, injunctive and equitable relief, and compensatory and punitive damages. On December 1, 2025, the plaintiffs filed an amended complaint raising claims on behalf of an individual student, identified only by their initials. On February 11, 2026, the plaintiff filed a second amended complaint.

    - **Latest update**: The parties are currently cross-briefing motions to compel the individual plaintiffs to identify themselves (the defendants' motion) and a motion to proceed using initials (the plaintiffs' motion). A hearing on that motion was held on March 30, 2026. Additionally, the plaintiffs also have sought leave to file a third amended complaint, adding two new individual plaintiffs, which the defendants oppose. In a March 26, 2026 order, the court stated that it will rule on the motion for leave to amend following the plaintiffs' March 27, 2026 deadline to file a reply.

2. Employment discrimination and related claims

- ***EEOC v. Nike, Inc.*, No. 4:26-mc-00128-CMS (E.D. Mo. 2026)**: On February 4, the EEOC filed a motion in the U.S. District Court for the Eastern District of Missouri to enforce an administrative subpoena issued in its investigation of Nike for alleged violations of Title VII. The EEOC alleged 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 asserted 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.

    - **Latest update**: On March 16, 2026, Nike filed its opposition to the EEOC's motion. According to Nike, after an initial production, Nike indicated that it would continue to produce

responsive materials on a rolling basis and offered to meet and confer with the EEOC regarding allegedly incomplete responses and regarding requests that Nike contends are unclear and burdensome. Nike states that the EEOC did not respond to that offer and instead filed its February 4 motion. Accordingly, Nike requested that the court order the parties to meet and confer and deny the EEOC's motion as premature. Nike further argued that the court could not order compliance "in full" because "the subpoena requests are vague, overbroad, and/or unduly burdensome." Nike also moved to dismiss the EEOC's miscellaneous action due to improper venue, or in the alternative, to transfer the matter to the U.S. District Court for the District of Oregon.

- ***Fell et al. v. Trump et al.*, 1:25-cv-04206 (D.D.C. 2025)**: On December 3, 2025, four former federal employees who had separated from the federal government pursuant to Executive Orders 14151 and 14173 sued President Donald Trump and numerous federal agencies and officials, challenging the Executive Orders and their implementing directives as violating the First Amendment, Title VII, and the Civil Service Reform Act based on alleged failures to follow required separation and Reduction in Force procedures. The plaintiffs allege that white, male employees were largely protected from separation due to the Executive Orders. The plaintiffs bring this suit on behalf of a putative class of purportedly similarly situated federal employees. They seek declaratory and injunctive relief, including a declaration that the orders and implementing directives are unlawful, expungement of termination from their records, and reinstatement with back pay, lost benefits, and other necessary compensatory relief. On January 12, 2026, the plaintiffs amended their complaint adding four additional named plaintiffs.
    - **Latest update**: On March 3, 2026, the plaintiffs moved to certify a class of "potentially thousands" of federal employees who were allegedly separated from their positions under Executive Orders 14151 and 14173. The plaintiffs also seek to certify two sub-classes: a Title VII Gender Subclass that includes female or non-binary federal employees, and a Title VII Race/Ethnicity Subclass that includes African American/Black, Hispanic/Latino, Asian American/Pacific Islander and/or Native American/Indigenous federal employees.
- ***Missouri v. Int'l Bus. Machs. Corp.*, No. 24SL-CC02837 (Cir. Ct. St. Louis Cnty. 2024)**: On June 20, 2024, the State of Missouri filed a complaint against IBM in Missouri state court, alleging that the company

violated the Missouri Human Rights Act by using race and gender quotas in its hiring and by basing employee compensation on participation in allegedly discriminatory DEI practices. The complaint cited a leaked video in which IBM's Chief Executive Officer and Board Chairman, Arvind Krishna, allegedly stated that all executives must increase representation of ethnic minorities in their teams by 1% each year to receive a "plus" on their bonus. The Missouri Attorney General sought to permanently enjoin IBM and its officers from utilizing quotas in hiring and compensation decisions. On September 13, 2024, IBM moved to dismiss the suit, arguing that the "plus" bonus is not a "rigid racial quota," but a lawful means of encouraging "permissible diversity goals." IBM also argued that Missouri failed to assert sufficient facts to show that the "plus" bonus influenced any employment decisions in the state. On February 10, 2025, the court granted IBM's motion to dismiss in a one-sentence order without any explanation. The court gave Missouri 30 days to amend its complaint. On March 14, 2025, Missouri filed a notice of appeal to the Missouri Court of Appeals regarding "whether the trial court erred in granting IBM's motion to dismiss."

    - **Latest update**: On February 2, 2026, the parties filed a joint stipulation of dismissal. Pursuant to that stipulation, the Missouri Court of Appeals dismissed the appeal on February 10, 2026, and the Circuit Court dismissed the case on February 13, 2026.

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

- ***City of Chicago v. Department of Justice*, No. 1:25-cv-13863 (N.D. Ill. 2025)**: On November 12, 2025, the Cities of Chicago and St. Paul sued the U.S. Department of Justice challenging new conditions added to grants awarded to the Cities under the Public Safety Partnership and Community Policing Act. Although the plaintiffs had been receiving grant money via the Act for decades, the complaint alleges that grants awarded in October 2025 included, for the first time, requirements that the plaintiffs comply with certain immigration and anti-DEI conditions. The plaintiffs allege, for example, that grant recipients must certify that they will not interfere with a government entity seeking to send, receive, maintain, or exchange citizenship information and that they do not operate any DEI programs. On November 17, the plaintiffs moved for a preliminary injunction seeking to bar the Justice Department from enforcing the contested funding conditions while the litigation proceeds, arguing that the conditions unlawfully coerce the cities to alter their immigration-enforcement policies and threaten the loss of significant federal funding.

On January 15, 2026, the court granted the plaintiffs' motion, holding that the Justice Department likely exceeded its statutory authority by imposing such conditions, that the challenged conditions violate the Spending Clause, and likely violated the Administrative Procedure Act.

    - **Latest update**: On March 10, 2026, Chicago filed a First Amended Complaint, adding the City of Santa Monica as a plaintiff.

- ***Chicago v. Noem*, No. 1:25-cv-12765 (N.D. Ill. 2025)**: On October 20, 2025, a group of cities, counties, and municipal organizations filed suit against the U.S. Department of Homeland Security ("DHS"), the Federal Emergency Management Agency ("FEMA"), and the agencies' respective heads challenging new grant conditions on longstanding DHS and FEMA grants that require recipients to (1) agree not to operate programs that advance or promote DEI and (2) agree to comply with "all executive orders the President has issued and might in the future issue to advance and impose his domestic political agenda." The plaintiffs allege the new grant conditions violate principles of separation of powers and Spending Clause of the U.S. Constitution and are arbitrary and capricious in violation of the APA. On October 24, 2025, the plaintiffs moved for a preliminary injunction, seeking to enjoin the defendants from enforcing the new grant conditions or retaliating against plaintiffs while the lawsuit is pending, and on November 21, 2025, the court granted the plaintiffs' preliminary injunction motion in part, enjoining the defendant agencies from enforcing the new grant conditions against the plaintiffs.

    - **Latest update**: The defendants filed an interlocutory appeal of the preliminary injunction order to the Seventh Circuit on January 20, 2026. On January 21, 2026, the plaintiffs amended their complaint to add similarly situated cities as plaintiffs. The plaintiffs sought a second preliminary injunction to cover the newly added parties, which the court granted on March 2, 2026.

- ***County of Santa Clara v. Noem*, No. 3:25-cv-08330 (N.D. Cal 2025)**: On September 30, 2025, more than two dozen cities and counties in California sued DHS, FEMA, and the agencies' respective heads challenging the same new grant conditions detailed above in Chicago v. Noem, No. 1:25-cv-12765 (N.D. Ill. 2025). On October 1, 2025, the plaintiffs moved for a preliminary injunction. On November 21, 2025, the court granted the plaintiffs' motion, enjoining the defendants from taking

"any action to withhold, freeze, or condition funds" based on the new grant conditions.

    - **Latest update**: On January 20, 2026, the defendants filed a notice of appeal with the Ninth Circuit.

4. Actions against educational institutions

- ***1776 Project Foundation v. Carvalho, et al.*, No. 2:26-cv-00548 (C.D. Cal. 2026)**: On January 20, 2026, a non-profit organization sued the Los Angeles Unified School District and several of its representatives on behalf of a member whose children attend the school system. The complaint alleges that the school district violates Title VI and the U.S. Constitution by classifying schools with 70%+ racial minority students as "Predominantly Hispanic, Black, Asian and Other non-Anglo," then affording these schools and their students certain benefits, including larger budgets, smaller class size, guaranteed parent-teacher conferences, and a leg-up on magnet school applications. The complaint seeks a permanent injunction prohibiting the use of racial preference in operating, funding, advertising, or admitting students into school programs.

    - **Latest update**: On February 18, 2026, the federal government filed a motion to intervene as a plaintiff. The government asserts it has an interest in the dispute because it suffers an "injury to its sovereignty arising from violation of its laws." The motion is unopposed. In a March 26, 2026 hearing on the motion, the court gave the defendants the opportunity to file an opposition.

- ***Johnson v. Fliger, et al.*, No. 1:23-cv-00848 (E.D. Cal. 2023), on appeal at No. 24-6008 (9th Cir. 2024)**: On June 1, 2023, Daymon Johnson, a professor at Bakersfield College in California, sued several Bakersfield and Kern Community College District officials, alleging that the district's commitment to "embrac[e] diversity" and "anti-racism" through state and local district statutes, regulations, and policies imposes an "ideological orientation" on district faculty by suppressing opposing viewpoints and political speech in violation of Section 1983 and the First and Fourteenth Amendments of the U.S. Constitution. On September 23, 2024, the court granted the defendants' motion to dismiss, holding that the plaintiff lacked standing. On July 14, 2025, the Ninth Circuit reversed the lower court's decision in part, holding that (1) the plaintiff sufficiently alleged "an intention to engage in a course of conduct arguably affected with a constitutional interest" under the First Amendment, (2) his intended

conduct was "arguably proscribed" by the regulations because they directly regulate the plaintiff as a community college employee and faculty member, and (3) the plaintiff adequately alleged a "credible threat" of enforcement under the relevant provisions. The Ninth Circuit remanded the plaintiff's motion for a preliminary injunction for the district court to consider in the first instance. On February 20, 2026, the U.S. District Court for the Eastern District of California granted in part the plaintiff's motion for a preliminary injunction, enjoining the defendants from enforcing the contested DEI regulations as applied to the plaintiff's social, political, academic, and private speech. The court denied the plaintiffs' facial challenge to the DEI policies. It also denied the defendants' motion to dismiss—which had been partially revived after the Ninth Circuit's reversal—due to the Ninth Circuit's holding that the plaintiff had standing.

    - **Latest update**: On March 6, 2026, the defendants filed an answer to the amended complaint, admitting certain allegations, including that the contested regulations "place significant emphasis" on diversity, equity, inclusion, and accessibility "competencies in faculty evaluations," and that the "[p]laintiff must take mandatory [diversity, equity, inclusion, and accessibility] training to be eligible to serve on faculty screening committees."

Legislative Updates

- Idaho HB 687: On February 16, 2026, the Idaho House introduced HB 687, which seeks to regulate the procurement and use of large language models and other generative AI systems by Idaho state agencies. Specifically, the bill would require such systems to ensure "ideological neutrality" and avoid outputs that promote or embed DEI concepts unless explicitly requested by users. The legislation defines DEI to include concepts associated with critical race theory, systemic bias, gender theory, and related frameworks, and prohibits agencies from using AI systems that alter factual information, restrict lawful content, or impose guardrails based on DEI principles. On March 2, 2026, the Idaho House approved the bill. HB 687 is now being considered by the Senate State Affairs Committee.

- Tennessee SB 2071: On January 22, 2026, the Tennessee Senate introduced SB 2071, which proposes to regulate the use of "programmable money"—that is, digital currency that can be coded with rules controlling how or where it may be spent. The legislation would prohibit entities from requiring users to use programmable money, and

would restrict issuers from denying transactions based on certain personal characteristics. The legislation specifically bars transaction decisions tied to factors such as political views, religion, gender, race, or sexual orientation, as well as broader social or environmental criteria, including environmental standards or other ESG-related benchmarks.

- Arizona HCR 2044: On January 22, 2026, the Arizona House proposed HCR 2044, a constitutional amendment that would restrict DEI practices in public institutions. The measure would bar public entities from requiring diversity statements, compelling individuals to affirm DEI-related viewpoints, or conditioning hiring, admission, contracting, or advancement on participation in DEI training or ideological commitments. The proposed amendment was passed in the Arizona House. The Arizona Senate Government Committee voted to pass the amendment 4-2 on March 25, 2026.

- California AB 2114: On February 18, 2026, the California Assembly introduced AB 2114, which would authorize public postsecondary institutions in the state to establish an "educational asylum" program that allows certain out-of-state transfer students to qualify for in-state tuition if they come from states where laws restrict the teaching of DEI and critical race theory, or similar subjects, in higher education. On March 9, AB 2114 was referred to the Assembly Committee on Higher Education.

- U.S. General Services Administration, OMB Control No. 3090-0290: On January 28, 2026, the U.S. General Services Administration proposed a federal regulation that would revise the requirements for System for Award Management (SAM) registration, which entities must complete to receive federal financial assistance such as grants, loans, or cooperative agreements. The regulation would require SAM applicants to follow recent executive branch guidance, including Department of Justice guidance on unlawful discrimination and Executive Order 14173, which emphasizes merit-based opportunity in federally funded programs. Under this regulation, entities receiving or applying for federal grants, cooperative agreements, and financial assistance would have to certify that they are in compliance with new federal DEI guidance and the anti-harboring provision of federal immigration law. The comment period for the proposed regulation ended on March 30, 2026.

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