

GIBSON DUNN

DEI Task Force Update

June 8, 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 June 4, U.S. Equal Employment Opportunity Commission (“EEOC”) Chair Andrea Lucas issued a [National Enforcement Plan](#) (“NEP”) for the agency for fiscal years 2025–2029, which replaces the prior Strategic Enforcement Plan issued for fiscal years 2024–2028. The NEP establishes new “global principles” for how the agency will deploy its resources, which include operating as a nationwide enforcement agency, broad enforcement of the laws in the EEOC’s jurisdiction, aligning with Administration priorities and executive orders, and prioritizing disparate treatment claims over disparate impact claims. The NEP also identifies categories of substantive enforcement priorities, including cases involving overt or repeated discrimination (including job advertisements focused on diverse candidates or visa holders, fellowship programs that exclude individuals



based on race or other protected characteristics, and “mass denials of accommodations”) and challenges to broad employment policies (with specific attention to programs that preference visa holders as well as DEI-related programs that may constitute race- or sex-based preferences). The NEP identifies for targeting— “[d]epending on the specific facts”—DEI practices including aspirational goals; limited-access training, mentoring, and events; diverse slates, diverse panels, and diversity statements; sharing demographic data with managers, the public, or others outside of HR and legal departments; and tying compensation to diversity goals. The NEP also focuses on development of the law (a) regarding DEI programs, religious accommodation, and sex and gender identity following recent seminal cases including *Ames*, *Muldrow*, *SFFA*, *Groff*, and *Bostock*; (b) regarding voluntary affirmative action programs, foreshadowing an effort to reverse *Weber* and *Johnson*; and (c) regarding the relatively new Pregnant Workers Fairness Act. In addition, the NEP prioritizes protecting vulnerable workers such as teenagers, low-wage earners, survivors of sexual assault, and individuals with disabilities. Lucas also designated four Chair priorities: addressing DEI-related discrimination; protecting American workers from national origin discrimination; defending women’s rights to single-sex spaces at work; and safeguarding workers’ religious liberty rights. The NEP takes effect immediately and supersedes all prior district-level enforcement plans.

On June 4, the Department of Justice’s Civil Rights Division [announced](#) that it opened investigations into potential race discrimination in admissions at fifteen medical schools. The announcement follows the Department’s recent determinations that [UCLA](#) and [Yale University](#) used race as a factor in admissions to their medical schools in violation of Title VI of the Civil Rights Act of 1964, as interpreted by the Supreme Court in *SFFA v. Harvard*. In announcing the new investigations, Assistant Attorney General Harmeet K. Dhillon of the Civil Rights Division stated that “[m]any of America’s top medical schools appear more concerned about the



demographics of their incoming classes than training students to succeed in the profession” and that the Division “will continue to protect American students from discriminatory and illegal preferences in admissions — especially in professions as critical as medicine.”

On May 29, the Office of Management and Budget (“OMB”) proposed sweeping [revisions](#) to the federal financial assistance guidance codified at 2 CFR Part 200. Among other things, the proposed rule seeks to prohibit federal agencies and pass-through entities (organizations that receive federal funds then pass those funds on to other entities) from using federal awards to “fund, promote, encourage, subsidize, or facilitate” DEI initiatives that “violate any applicable Federal anti-discrimination laws.” This includes, specifically, “racial preferences or other forms of racial discrimination,” as well as activities where “race or intentional proxies for race are used as selection criteria for employment or program participation.” Additionally, OMB proposes a new Section 200.218 that would prohibit the use of federal awards to promote or support theories of disparate-impact liability based on federally protected characteristics such as race, sex, or age “including by not issuing terms, conditions, or guidance that would advance theories of disparate-impact liability.” The rule would also require senior political appointees at federal agencies to conduct pre-issuance reviews of discretionary awards to ensure that proposed funding decisions are consistent with applicable law, agency priorities, and the national interest, including by assessing whether the awards comply with, among other things, the prohibition on DEI-related discrimination. Where recipients are found to have engaged in prohibited DEI practices, the government may seek to recover funds or terminate the award. The public has 45 days to comment on the proposed regulations.



On May 27, the EEOC submitted a [proposal](#) to OMB to rescind its interpretive rule, “Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964,” a 1979 regulation that provides guidance to private employers on how to implement voluntary affirmative action plans without violating Title VII of the Civil Rights Act of 1964. The existing rule allows employers to conduct a self-analysis of whether their employment practices have had an adverse impact on protected groups and, if so, to adopt reasonable corrective measures—such as goals and timetables—to address discriminatory patterns under certain circumstances.



On May 26, in a *per curiam* decision, the Ninth Circuit affirmed in part and reversed in part the district court’s preliminary injunction ordering the Environmental Protection Agency, the National Science Foundation, and the National Endowment for the Humanities to reinstate certain grants on behalf of two provisional classes of University of California researchers whose grants had been terminated pursuant to certain Executive Orders issued by the Trump Administration. The Ninth Circuit held that the district court likely lacked jurisdiction over the so-called “Form Termination Class”—researchers whose grants were terminated by form letter without grant-specific explanation. According to the court, under the Supreme Court’s ruling in *National Institutes of Health v. American Public Health Association*, 145 S. Ct. 2658 (2025), claims based on research grants that seek to enforce an obligation to pay money are contractual in nature and, under the Tucker Act, fall within the jurisdiction of the Court of Federal Claims, not federal district courts. At the same time, the court affirmed the preliminary injunction for the “DEI Termination Class”—researchers whose grants were terminated because of DEI-specific Executive Orders. The court explained with respect to the DEI Termination Class that these researchers were likely to succeed on a First Amendment viewpoint discrimination claim. The court reasoned that even in the provision of subsidies, the government may not aim to suppress disfavored viewpoints, and that the agencies had selected grants for termination based on



recipients' perceived ideology rather than redefining the scope of a program. The case was remanded for further proceedings. The case is *Thakur et al. v. Donald J. Trump, et al.*, No. 25-4249 (9th Cir. 2026).

On May 18, non-profit group Protect the Public's Trust filed a [complaint](#) with the U.S. Department of Education ("DOE"), Department of Health and Human Services ("HHS"), and Department of Justice ("DOJ"), alleging violations of Titles VI, VII, and IX by Penn State University's Dickinson Law School. The complaint focuses on the law school's 2026 "Strategic Plan Update," a document intended to guide the law school's admissions and employment practices for the next five years, which, among other things, articulates the law school's goal to "[p]romot[e] diversity in legal education and the profession to achieve equity in society." Specifically, the complaint alleges that the Strategic Plan Update unlawfully directs consideration of diversity and inclusion in hiring and admissions. It also challenges the Strategic Plan Update's alleged requirement that all first-year students take a course on race and the law, claiming that the course requires students to "affirm activist talking points" such as the need to "eradicate patriarchy" and that white students specifically are asked to "reflect on their perceived wrongs." The complaint repeatedly references a former Penn State student who is a white male and who claims he was forced to withdraw from the law school after refusing to participate in the course. According to the complaint, the student viewed required participation in the course as a form of "compelled speech." The complaint asks DOE, HHS, and DOJ to investigate Penn State in relation to these allegations.



On May 15, the EEOC sent OMB a [proposed rule](#) that would rescind employers' legal obligations to collect and report workforce demographic data. The proposal seeks to rescind EEO-1 reporting requirements, which require private-sector employers with 100 or more employees and federal contractors with over 50 workers to submit to the EEOC annual reports on workforce demographics. The proposed rule also would eliminate the EEO-3, EEO-4, and EEO-5 data collections from unions, state and local governments, and public schools, respectively. According to [reporting](#) by Law360, former EEOC Chair Jenny R. Yang criticized the proposal, calling it a move "in the wrong direction" at a time when "data-driven decision-making is more important than ever." The EEOC has not responded or made any public statement on the proposal.



Also on May 15, Representative Jerrold Nadler of New York and 11 other Democratic members of Congress sent a letter to EEOC Chair Andrea Lucas, expressing concern that the agency had not yet opened its annual EEO-1 data collection cycle for 2026. The letter notes that large private employers have been required to submit workforce demographic data since 1966, that the collection portal typically opens in the spring, and that the pending regulation (described above) suggests the Commission may be considering rescinding the EEO-1 requirement altogether. The letter further expresses concern that the EEOC apparently had not renewed its contract with third-party vendor Westat, which was set to expire at the end of fiscal year 2025, thereby "call[ing] into question the agency's preparedness to carry out this year's [EEO-1] collection." The letter also flags that OMB's approval for the EEO-1 collection expires on November 30, 2026, and it states that "[w]e expect the EEOC to initiate the process to renew this clearance in a timely manner to ensure there is no interruption in data collection." The letter concludes by posing questions about the EEO-1 process, including the reporting deadline, contracting status, any steps to suspend or modify the collection, and plans for renewed OMB approval for EEO-1 collection.

On May 7, 2026, Judge Colleen McMahon of the U.S. District Court for the Southern District of New York permanently enjoined the National Endowment for the Humanities (“NEH”) from terminating over 1,400 grants that were eliminated at the direction of the Department of Government Efficiency (“DOGE”) in early 2025. The case is *American Council of Learned Societies, et al. v. National Endowment for the Humanities, et al.*, No. 1:25-cv-03657 (S.D.N.Y. 2025). The plaintiffs filed the suit on May 1, 2025, against the NEH, DOGE, and numerous individual government defendants, asserting that the over 1,400 grant eliminations violated the separation of powers doctrine, the Administrative Procedure Act, the First Amendment, and the Fifth Amendment. On March 6, 2026, the plaintiffs moved for summary judgment, arguing that DOGE personnel targeted grants with descriptors that used terms like “BIPOC” and “gay” to identify DEI-related NEH grants for termination. The plaintiffs argued that the terminations constituted unconstitutional viewpoint discrimination under the First Amendment, violated the Fifth Amendment by employing classifications based on race, sex, and sexual orientation, and lacked authority from Congress. On March 27, 2026, the defendants filed a cross-motion for summary judgment, contending that the court lacked jurisdiction because the claims were contract disputes belonging in the Court of Federal Claims under the Tucker Act.



On May 7, 2026, the court granted the plaintiffs’ motion for summary judgment and denied the defendants’ cross-motion. The court held that, as a matter of law, (1) the grant terminations were *ultra vires* (“beyond the [agency’s] powers”) because DOGE lacked statutory authority to identify, select, or direct terminations of NEH grants; (2) the grant terminations violated the First Amendment because DOGE’s processes reflected viewpoint discrimination; and (3) the terminations violated the Equal Protection Clause of the Fifth Amendment because DOGE used protected characteristics as criteria for selecting grants for termination, and the government’s asserted interests of administrative convenience, merit, and waste reduction “[did] not come close to satisfying strict scrutiny

or heightened scrutiny.” With respect to the defendants’ cross-motion, the court held that the Tucker Act did not divest the court of jurisdiction over the plaintiffs’ claims, which rested on independent constitutional and statutory grounds. The government has not yet indicated whether it intends to appeal.

On May 5, OMB, the Office of Federal Procurement Policy, the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration published a request for comments regarding information to be collected in connection with Executive Order 14398, including information and reports required to ascertain compliance with the EO such as books, records, and accounts, reports of subcontractor violations, and reports of subcontractor suits that put the EO’s validity at issue. (EO 14398 prohibits certain “racially discriminatory DEI activities” and requires that government contractors make available records to verify compliance.) The notice solicits comments on four specific questions: (1) whether the proposed collection is necessary for the proper performance of federal acquisition functions, including the practical utility of the proposed collection; (2) the accuracy of the burden estimate; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden on respondents, including through automation. The notice also states that the Federal Acquisition Regulatory (“FAR”) Council intends to issue separate rulemaking, providing the public an opportunity to comment on the substantive policy implementation of EO 14398 in the FAR. Comments are due by July 6, 2026.



[Media Coverage and Commentary](#)

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



- [Law.com, “Federal Judge to Law Grads: DEI Is ‘Absolutely Intrinsic’ to Equal Justice” \(May 21, 2026\)](#): Avalon Zoppo of Law.com reports on remarks by U.S. District Judge Mustafa Kasubhai of the District of Oregon at a commencement address at the University of Oregon School of Law, in which he defended DEI as “absolutely intrinsic” to the pursuit of equal justice and the rule of law. According to Zoppo, Judge Kasubhai emphasized that diversity of background and lived experience in the legal profession will “make the law better.” The article notes that the remarks come amid the Trump Administration’s continued scrutiny of DEI policies and as companies have rolled back such programs in response. Zoppo also reports that the scrutiny may be affecting diversity commitments at law firms, citing National Association for Law Placement data showing a decline in racial and ethnic diversity at law firms in 2025 and a drop in survey participation from firms and lawyers compared to prior years.
- [Law360, “ABA Section Votes To Scrap Law School DEI Standards” \(May 15, 2026\)](#): Emma Cueto of Law360 reports that on May 15, the American Bar Association’s (“ABA”) Council of the Section of Legal Education and Admissions to the Bar voted 10-4 to repeal Standard 206, which required law schools to “demonstrate by concrete action a commitment to diversity and inclusion” and to commit to maintaining a student body “diverse with respect to gender, race and ethnicity.” The decision followed recommendations from the section’s Standards Committee, which concluded that the standard could jeopardize the ABA’s role as a nationwide accreditor because the DOE and several states had interpreted applicable law to prohibit enforcing such diversity requirements as minimum accreditation standards. The ABA [received 50 public](#)

[comments](#) on the proposal, 48 of which opposed the repeal, with many arguing for the constitutionality of Standard 206 and urging the ABA not to capitulate to political pressure. As reported by Cueto, the Standards Committee acknowledged these comments, stating that it “understands the dedication of the commenters to diversity and inclusion” and noting that “law schools, affiliate organizations and bar associations are free to further these goals consistent with their missions and the law.” The recommendation will next proceed to the ABA House of Delegates for a vote in August.

- [Law360, “As DEI Challenges Rise, Circuits Sketch Out Boundaries” \(May 14, 2026\)](#): Law360’s Anne Cullen reports that recent decisions from the Tenth and Second Circuits have clarified that a single DEI training is insufficient to support a harassment claim, but a series of such trainings, combined with tangible workplace consequences for refusing to participate, may support such a claim. As Ms. Cullen reports, on May 11, 2026, the Tenth Circuit rejected a white corrections officer’s hostile work environment claim based on a single mandatory racial sensitivity training, finding that the one-time session was insufficient to meet Title VII’s “severe or pervasive” standard. Conversely, in September 2025, the Second Circuit reinstated a white supervisor’s harassment suit where the employer’s DEI programming allegedly involved repeated mandatory workshops, an overnight retreat, and consequences for pushback, including loss of supervisory responsibilities. Cullen quotes Gibson Dunn partner Jason Schwartz, who observed that “[c]ourts are drawing a line between training alone and training plus A one-time training is generally not enough to create a hostile work environment, but courts have found that training plus follow-on comments or conduct, depending on how serious and frequent, could cross the line.” Other practitioners quoted in the article added that certain DEI practices, such as broadening recruiting pipelines, tracking workforce demographics, and publishing diversity reports remain legally sound, provided that individual employment decisions are not made on the basis of protected characteristics.
- [Bloomberg Law, “Trump’s Anti-DEI Efforts Struggle Under Federal Judges’ Scrutiny” \(May 6, 2026\)](#): Bloomberg Law’s Chris Marr and Khorri Atkinson report that the Trump Administration’s anti-DEI policies have met repeated resistance in federal courts, with judges finding various enforcement mechanisms unconstitutional on First Amendment, vagueness, and separation-of-powers grounds. The fight has taken on what one interviewed attorney described as a “whack-a-mole” quality, meaning that when one avenue is blocked, the Administration pivots to

another. The authors describe the various methods the Administration has used to advance its policy goals in relation to DEI, including implementing executive orders, terminating grants, imposing funding conditions, withholding regulatory licenses, and conditioning merger approvals. At the same time, Marr and Atkinson report, many rulings related to federal DEI policy remain at the preliminary injunction stage and are pending appeal, meaning the courts' orders are not permanent. As a result, they conclude that the boundaries of permissible DEI activity remain unsettled.

- [Reuters, “Are Companies Quiet Quitting DEI?” \(April 28, 2026\)](#): Reuters' Sharon Kits Kimathi reports that DEI policies “are falling down the list of priorities for companies.” As Kimathi writes, a recent report by the Thomson Reuters Foundation drew data from nearly 3,000 global companies and found that DEI commitments remain most common for gender representation, while targets related to ethnicity and disability are comparatively limited. According to the report, 53% of companies surveyed publicly disclosed any DEI-related commitments, which were primarily focused on gender. The report found that 8% of companies reported setting ethnicity-related goals, while 5% set disability-related goals. Fewer than half of all companies reported having time-limited DEI targets. The report also found that public reporting on workforce ethnicity data had declined. According to the report, stronger adoption of DEI incentives did not necessarily correlate with narrower pay gaps.
- [AP News, “DeSantis Signs Florida Law Banning Local DEI Funding, Says White Men Are ‘Disfavored’” \(April 22, 2026\)](#): AP's Mike Schneider reports that Florida Governor Ron DeSantis signed legislation that prohibits Florida counties and cities from funding or promoting DEI initiatives. The new law permits residents to sue local governments for violations, and officials found to have funded DEI programs in contravention of the law can be removed from office. The article includes DeSantis's commentary on the new law, as well as his opinion that DEI programs “disfavor” white men, Asian Americans, and other groups. As Schneider reports, the law builds on DeSantis's anti-DEI record during his two terms in office, such as trying to restrict how race and sex are taught in schools through the “Stop WOKE Act.”

Case Updates

Below is a list of updates in new and pending cases:

1. Employment discrimination and related claims

- ***EEOC v. Coca-Cola Beverages Ne., Inc., No. 1:26-cv-00115 (D.N.H. 2026)***: The EEOC sued Coca-Cola Beverages Northeast on February 17, 2026, alleging it engaged in unlawful employment practices on the basis of sex in violation of Title VII. The complaint alleges that Coca-Cola 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’s exclusion of male employees from the event constitutes a “denial of equal compensation, terms, conditions, or privileges of employment on the basis of sex.” On April 20, 2026, Coca-Cola moved to dismiss the complaint, arguing that its employer-sponsored event was a lawful attempt to expand the company’s pool of qualified candidates among its existing employees without impacting the selection process for advancement, and that its actions complied with Title VII and Executive Order 11246, which was in effect at the time of the networking event.
 - **Latest update**: On May 4, 2026, the EEOC filed its opposition to the motion to dismiss, arguing that it had pled facts sufficient to show that male employees who were excluded from the networking event suffered an adverse employment action. On the law, the EEOC argued that the U.S. Supreme Court’s recent decision in *Muldrow v. City of St. Louis* only requires “some harm”—which need not be “economic or tangible”—for an employer’s activity to rise to the level of an adverse action. On the facts, the EEOC contended that it had shown that men were excluded from the networking event, which “render[ed] male employees worse off than their female counterparts” in part by “deny[ing] them the same paid time off that the female employees received to attend the event.” The EEOC further argued that a Rule 12(b)(6) motion to dismiss is not an appropriate vehicle to attack its prayer for relief, and that the court should decline to dismiss the EEOC’s request for punitive damages.
- ***Steffens v. Walt Disney Co., No. 25NNCV00944 (Cal. Sup. Ct. Los Angeles Cnty. 2025)***: On February 11, 2025, a white former executive for Marvel Entertainment sued Disney, alleging the company discriminated against him on the basis of race, sex, and age. He alleged he was denied a promotion because of his race and age, and that the Company failed to promote him as retaliation for his objection to “effort[s] to promote

presidents to senior vice presidents based on their race and a memorandum that would have referred to employees with the racial signifier ‘BIPOC.’”

- **Latest update:** On March 30, 2026, the plaintiff filed a request for dismissal with prejudice of all parties and all causes of action, citing no reason for the dismissal.
- **Vaughn v. CBS Broadcasting, Inc., et al., No. 2:24-cv-05570 (C.D. Cal. 2024):** On July 1, 2024, former Los Angeles news anchor Jeff Vaughn filed suit against CBS Broadcasting, alleging that CBS-affiliated Los Angeles stations terminated him because he is “an older, white, heterosexual male.” Vaughn claims that CBS replaced him with a “younger minority news anchor” in violation of Section 1981, Title VII, and the Age Discrimination in Employment Act. The complaint points to public statements by CBS expressing its commitment to diversity, including statements discussing various representation goals. Vaughn, who is represented by America First Legal, is seeking over \$5 million in damages. On October 31, 2025, the defendants moved for summary judgment, arguing that the termination was based on legitimate, nondiscriminatory grounds, the plaintiff lacked evidence of pretext or but-for causation, and the plaintiff failed to establish individual liability against the individual defendants under Section 1981. The defendants further contended that CBS’s conduct, even if found discriminatory, would still be protected by the First Amendment because CBS, a private company engaged in expressive activity, has a First Amendment right to choose who channels that expression.
 - **Latest update:** On April 7, 2026, the court granted the defendants’ motion for summary judgment. The court held that the plaintiff’s race discrimination claims under Section 1981 and Title VII fail as a matter of law under both the *McDonnell Douglas* burden-shifting and mixed-motive frameworks. Under *McDonnell Douglas*, the court found that the defendants had articulated a legitimate, non-discriminatory reason for the plaintiff’s termination—namely, longstanding performance deficiencies supported by negative evaluations and low viewer recognition—and that the plaintiff had failed to show that the termination was pretextual with “specific and substantial” evidence. Under the mixed-motive framework, the court found no direct or circumstantial evidence that race was a motivating factor in the termination. Ultimately, the court determined that no reasonable jury could find discriminatory

intent on the record presented. On April 20, 2026, the plaintiff filed a notice of appeal to the Ninth Circuit.

- ***Young v. Colorado Dep't of Corrections, No. 23-cv-01688-NYW-SBP (D. Colo. 2023), No. 25-1068 (10th Cir. 2023)***: On June 30, 2023, a white former Colorado Department of Corrections officer, Joshua Young, filed suit against his former employer, the Colorado Department of Corrections, and individual directors in the Department, asserting hostile work environment claims under Title VII and Section 1981. Young alleged that a mandatory DEI training he completed in March 2021 contained racially discriminatory content targeting white employees and created a hostile work environment, compelling his resignation in July 2021. On January 27, 2025, the district court granted a motion to dismiss, holding that Young's allegations regarding a single training session lacked "any well-pleaded factual allegations detailing how the [] training affected the workplace or how the workplace was otherwise infected with racial animus" and thus were insufficient to allege a hostile work environment based on race. The Tenth Circuit heard oral argument on Young's appeal on January 22, 2026, on which we reported in our February 2026 [newsletter](#).
 - **Latest update**: On May 11, 2026, the Tenth Circuit affirmed the dismissal, reasoning that Young's allegations regarding the single training session did not cross the "extremely high" threshold for a hostile work environment claim and that Young's fears about future diversity training could not save his claim.

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

- ***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 EOs 14173 and 14168, which voided affirmative action requirements for government contractors and outlined the federal government's policy to "recognize two sexes," respectively. 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" Seattle 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. On December 29, 2025, the defendants filed a notice of appeal of the district court's order granting a preliminary injunction.

- **Latest update:** On April 7, 2026, Seattle filed an amended complaint, adding as plaintiffs the cities of Cleveland, Columbus, Durham, and Portland, as well as the counties of Allegheny, Hennepin, Prince George's, and Ramsey. The amended complaint also added various federal agencies as defendants. The causes of action remain the same. On May 1, 2026, the plaintiffs filed a second motion for preliminary injunction, seeking to extend to the additional plaintiffs the injunctive relief granted to Seattle.
- ***Fell v. Trump, No. 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 EOs 14151 and 14173 sued President 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. 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 EOs 14151 and 14173. The plaintiffs also sought 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. On April 6, 2026, the defendants filed their opposition to class certification, as well as a motion to dismiss, arguing that the plaintiffs (i) lack standing to sue agencies and agency heads that never employed them, (ii) failed to exhaust administrative remedies, and (iii) failed to state viable claims for relief.
 - **Latest update:** On May 11, 2026, the plaintiffs filed an opposition to the defendants' motion to dismiss, arguing that standing exists because the defendants functioned as a "single entity" executing a common presidential directive to "purge" federal employees in DEI-related positions. On the merits, the plaintiffs contend they have plausibly alleged that the Trump Administration publicly equated DEI with its political opponents and then targeted DEI-associated employees for removal—giving rise to First Amendment retaliation claims, and Title VII

claims under advocacy, motivating-factor, and pattern-or-practice theories of liability.

- ***Flinn et al. v. City of Evanston, No. 1:24-cv-04269 (N.D. Ill. 2024)***: On May 23, 2024, a putative class action complaint was filed against the City of Evanston challenging Evanston’s Restorative Housing Program, which compensates Black residents for housing discrimination they or their ancestors may have faced between 1919 and 1969. The program assists eligible applicants with buying or improving their homes, and in some cases, qualifies households for direct payments of up to \$25,000. The plaintiffs allege that the program violates Section 1983 because it is limited to only Black residents or their ancestors. The suit seeks to certify a class of “all individuals who are able and ready to apply for the program and are eligible for a \$25,000 payment but for the program’s race-based eligibility requirement.” On March 27, 2026, the court denied a motion to dismiss filed by the City.
 - **Latest update**: On May 8, 2026, the City answered the complaint, denying liability and asserting six affirmative defenses: (1) failure to state a claim upon which relief can be granted; (2) statute of limitations; (3) laches; (4) lack of standing; (5) failure to satisfy the requirements for class certification under Rule 23; and (6) governmental immunity for legislative acts.
- ***Nat’l Ass’n of Diversity Officers in Higher Educ., et al. v. Trump, et al., No. 1:25-cv-00333 (D. Md. 2025), No. 25-1189 (4th Cir. 2025)***: On February 3, 2025, the National Association of Diversity Officers in Higher Education, the American Association of University Professors, the Restaurant Opportunities Centers United, and the Mayor and City Council of Baltimore, Maryland brought suit against the Trump Administration, challenging EOs 14151 and 14173. The plaintiffs contend that the EOs exceed presidential authority, violate the separation of powers and the First Amendment, and are unconstitutionally vague. On February 21, 2025, the Court granted in part a preliminary injunction to prevent the Administration from enforcing the EOs. On March 14, 2025, the Fourth Circuit stayed the injunction. On February 6, 2026, the Fourth Circuit vacated the preliminary injunction and remanded to the lower court, finding that the plaintiffs lacked standing to challenge the Enforcement Threat Provision and failed to show that they were likely to succeed on their claims that the Termination Provision and Certification Provision are facially unconstitutional.

- **Latest update:** On April 30, 2026, in district court, the defendants filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim. In the motion, the defendants argue that the plaintiffs lack standing to challenge the Enforcement Threat Provision because it is an intra-governmental action and does not create an imminent danger of injury. They alternatively argue that the allegations are moot because “[t]he at-issue report has already been ‘submitted ... to the President,’ that the plaintiffs’ First Amendment argument fails because the plaintiffs have no protected speech interest in operating unlawful programs, and that the plaintiffs’ Fifth Amendment vagueness challenge to the Termination Provision fails because courts tend to defer to government funding decisions and bar challenges based on facial vagueness where the government is “acting as a patron, rather than as sovereign.” Finally, the defendants assert that the plaintiffs’ Spending Clause and separation-of-powers claims fail because the EOs do not impose new funding conditions or usurp Congress’s authority.
- ***Nat’l Ass’n of Diversity Officers in Higher Educ., et al. v. Trump, et al., No. 8:26-cv-01532 (D. Md. 2026)*:** On April 20, 2026, the National Association of Diversity Officers in Higher Education, ~~the~~ American Association of University-Professors, the United Academics of Maryland-University-of Maryland, College Park, Prince George’s-County, Maryland, the National Association of Minority-Contractors, and the National Association of Minority-Contractors, DMV Chapter brought suit against the Trump Administration, challenging EO 14398. The plaintiffs contend that the EO exceeds presidential authority and violate the First Amendment’s prohibitions on content-based restrictions, free speech, and free association. The plaintiffs seek preliminary and permanent injunctive relief preventing implementation or enforcement of the EO.
 - **Latest update:** On May 22, the plaintiffs amended the complaint to now challenge the constitutionality of both EO 14398 and the FAR Council Guidance, dated April 20, 2026, issued to implement EO 14398. The Amended Complaint contends that the FAR Council guidance violates the Administrative Procedure Act because it is unconstitutional, arbitrary and capricious, and not issued in accordance with procedural requirements. It also adds a challenge to EO 14398 under the Fifth Amendment contending the EO is void for vagueness because it “does not provide fair notice of what is

prohibited and encourages and authorizes discriminatory enforcement because it fails to adequately define the scope of the circumstances when it applies.”

- ***Oregon Council for the Humanities, et al. v. DOGE, No. 3:25-cv-00829 (D. Or. 2025)***: On May 15, 2025, the Oregon Council for the Humanities and the Federation of State Humanities Councils sued DOGE, the NEH, and the National Council on the Humanities, among others, alleging the NEH under DOGE’s control unlawfully terminated nearly all grants to humanities councils in violation of the Administrative Procedure Act, the NEH authorizing statute, the Impoundment Control Act, and constitutional separation of powers principles.
 - **Latest update**: On April 17, 2026, the plaintiffs filed a motion for summary judgment, arguing that the defendants violated the constitutional separation of powers doctrine by refusing to spend funds that Congress appropriated to the Federal State Partnership and instead following EOs that it contends conflict with Congress’s priorities as expressed in the National Foundation on the Arts and Humanities Act. The plaintiffs further argue that the grant terminations violated the Administrative Procedure Act because the defendants ignored statutory funding formulas and termination procedures and instead terminated grants *en masse*, and that the defendants’ actions were arbitrary and capricious because the administrative record contains no satisfactory explanation for the terminations. Finally, the plaintiffs argue that the defendants failed to consider the plaintiffs’ reliance interests after sixty years of unbroken funding.
- ***AI LLC v. Philip J. Weiser, No. 1:26-cv-01515 (D. Colo. 2026)***: On April 9, 2026, X.AI LLC filed suit against Colorado Attorney General Philip Weiser to enjoin enforcement of Colorado Senate Bill 24-205. The law, effective June 30, 2026, would prevent “algorithmic discrimination” by requiring developers and deployers of “high-risk” AI systems to mitigate reasonably foreseeable risks of algorithmic discrimination and to publicize disclosures about those efforts to the Attorney General and the public. X.AI alleges that the law violates the First Amendment, the Commerce Clause, and the Equal Protection Clause, and is unconstitutionally vague. On April 24, the court granted the DOJ’s unopposed motion to intervene as a plaintiff in the case.

- **Latest update:** On April 24, 2026, the parties filed a joint motion to vacate the scheduling conference, suspend all pending case deadlines, and temporarily stay enforcement of Senate Bill 24-205. On April 27, 2026, the court granted the parties' motion and stayed the proceedings. Under the terms of the stay, Colorado cannot enforce the law until the court rules on X.AI's forthcoming motion for a preliminary injunction.

3. Actions against educational institutions

- ***Kleinschmit v. Univ. of Chicago, No. 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." 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 by intentionally discriminating on the basis of race, color, and ethnicity. On December 17, 2025, the court granted in part and denied in part a motion to dismiss, dismissing 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, and holding that the plaintiff lacked standing for injunctive relief because he was a former university employee who did not seek reinstatement or otherwise express a desire to return to work at the university. The court, however, allowed the discrimination claim under Title VI to proceed. On March 2, 2026, the plaintiff filed a third amended complaint, again bringing claims of racial discrimination and retaliation under Section 1981, as well as claims of racial discrimination under Section 1983 and Title VI.
 - **Latest update:** On April 20, 2026, the university moved to dismiss the plaintiff's third amended complaint, arguing that it failed to cure the defects identified in the court's prior order, including the plaintiff's lack of standing to seek injunctive relief, the defendants' entitlement to Eleventh Amendment immunity, and the absence of a cognizable basis for liability. On May 12, 2026, the plaintiff opposed the motion, arguing that he had adequately pled standing for prospective injunctive relief based on an ongoing threat of retaliation and continuing discriminatory practices, and that the defendants are not entitled to Eleventh Amendment immunity because the complaint alleges ongoing violations of federal law. The plaintiff further argued that his

Title VI claim is properly pled, including because the court upheld the claim in its previous order.

Legislative Updates

- [R. 8379](#): On April 20, 2026, U.S. Representative Julia Letlow (R-LA) introduced House Bill 8379, the “Freedom from Ideological Requirements in Employment (‘FIRE’) Act.” The bill would (1) prohibit DEI trainings or endorsement of statements reflecting DEI principles as a condition for Federal hiring or employment and (2) prohibit implementing training courses for the Federal workforce that relate to DEI, “critical theory relating to race and gender,” “intersectionality, sexual orientation, or gender identity,” or any “assertion that a particular race, color, ethnicity, religion, biological sex, or national origin is inherently or systemically superior, inferior, oppressive, oppressed, privileged or underprivileged.” The Act defines DEI as “any practice, training, statement, or principle that asserts” “how systemic racism is embedded in legal systems, policies, and societal structures rather than being solely a product of individual prejudice.”
- [R. 8445](#): On April 22, 2026, U.S. Representatives Young Kim (R-CA), Tim Burchett (R-TN), and Byron Donalds (R-FL) introduced House Bill 8445, called the “Stop DEI Act.” The Act would prohibit federal funds from being made available to institutions of higher education that consider race, sex, ethnicity, color, or national origin “in ways that violate the Nation’s civil rights laws.”
- [R. 8495](#): On April 24, 2026, U.S. Representative David Joyce (R-OH) introduced House Bill 8495, a broad appropriations bill which, among other things, would prohibit appropriated funds from being used to “implement, administer, apply, or enforce” programs or activities “for the purposes of diversity, equity, and inclusion training or implementation.” The bill also prohibits funds from being used to carry out any program, project, or activity that promotes or advances Critical Race Theory.
- [Illinois B. 3731](#): On February 6, 2026, Illinois State Senator William Cunningham (D) and State Representative Robyn Gabel (D) introduced Illinois Senate Bill 3731, the “First 2026 General Revisory Act.” The Act would require cultural diversity and racial and ethnic sensitivity training for State police officers and would amend the Manufacturing Illinois Chips for Real Opportunity (“MICRO”) Act to require employers with at least 100 employees to submit diversity reports on their workforce, board of directors, and vendors. Employers would also be required to submit a

vendor diversity report detailing actual contractual spending for minority-owned and women-owned businesses and employers' goals for the next fiscal year to contract with diverse vendors.

- 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. Several of these bills were recently passed into law.
 - On April 9, 2026, [Kansas Senate Bill 375](#) became law after the legislature overrode the Kansas governor's veto. We reported on this legislation in our March 2, 2026 [newsletter](#). The law requires proxy advisors to disclose when they make recommendations "against company management" without conducting financial analysis, such as recommendations based on ESG, DEI, and social credit or sustainability scores.
 - On April 10, 2026, Kansas also passed [House Bill 2513](#), partially overriding the governor's veto. Similar to S.B. 375, the law requires proxy advisors to provide clear, factual disclosures when recommending casting a vote for nonfinancial reasons such as DEI or ESG. Its stated purpose is to prevent fraudulent and deceptive practices.
 - On May 4, 2026, [Oklahoma House Bill 4429](#), sponsored by Oklahoma State Representative Kyle Hilbert (R) and Senator Julie Daniels (R)—which we also reported on in our March 2, 2026 [newsletter](#)—passed into law. Similar to the Kansas legislation, the law requires proxy advisors to "provide clear, factual disclosures when they recommend casting a vote for a nonfinancial reason," in order to "prevent fraudulent or deceptive acts and practices."

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