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Maryland Federal District Court Preliminarily Blocks Key Provisions of Trump Anti-Diversity, Equity and Inclusion Orders

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On February 21, 2025, the US District Court for the District of Maryland issued an order temporarily blocking three key provisions of two January 2025 executive orders issued by President Donald Trump – Executive Order 14151, "Ending Radical and Wasteful Government DEI Programs and Preferencing," and Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" (anti-DEI orders). This **January 23, 2025, Cooley alert** discusses Executive Order 14173 in more detail.

The three key provisions of the anti-DEI orders at issue in this case required:

1. Each federal agency, department or commission head to terminate "equity-related grants or contracts" within 60 days (**termination provision**).
2. Each agency head to "include in every contract or grant award" a certification that the contractor or grantee "does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws" (**certification provision**).
3. The attorney general to take "appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI" to "deter" such "programs or principles" and to "identify … potential civil compliance investigations" to accomplish such deterrence (**enforcement provision**).

The lawsuit

The lawsuit underlying the order, *National Association of Diversity Officers in Higher Education v. Trump*, No. 1:25-cv-00333, was brought by the mayor and City Council of Baltimore, Maryland, along with various organizations that receive federal funding to support educators, workers and other communities. These groups include a restaurant worker group, the American Association of University Professors and the National Association of Diversity Officers in Higher Education (an association for chief diversity officers and professionals). The complaint, which includes the line, "[i]n the United States, there is no king," alleged that the challenged provisions are unconstitutionally vague in violation of the Fifth Amendment, including with respect to undefined terms that "leave potential targets with no anchors as to what speech or which actions the order encompasses." In addition, the complaint alleged that the provisions violate the First Amendment by chilling free speech on matters of substantial political import, and the separation of powers, because Congress did not delegate its constitutional spending power to the president with respect to the federal programs and funds at issue.

Court finds challenged provisions vague and unconstitutional

US District Court Judge Adam Abelson granted a preliminary injunction, finding that the plaintiffs "easily established their standing" to bring the case, as well as the requisite irreparable harm. Further, the court held that the plaintiffs are likely to prove that the termination provision and enforcement provision are unconstitutionally vague, and the enforcement provision and certification provision constitute an abridgment of the freedom of speech. Given these holdings, the court noted that it did not need to yet

decide the separation of powers claim.

Termination provision

With respect to the termination provision, the court held that the plaintiffs had shown a likelihood of success on their claim that the vagueness of the term "equity-related grants or contracts" invites arbitrary and discriminatory enforcement, and constitutes "insufficient notice" to current grantees about whether and how they can "adapt their conduct to avoid termination of their grants or contracts." The court wondered whether, pursuant to the orders, "equity" is limited to "one part of the acronym 'DEI' or 'DEIA,' or whether it is meant as an umbrella term or synonym for some or all of the concepts encompassed by these acronyms?" It gave some helpful examples of some of the open questions federal grantees and contractors face with respect to the termination provision:

- "If an elementary school receives Department of Education funding for technology access, and a teacher uses a computer to teach the history of Jim Crow laws, does that risk the grant being deemed 'equity-related' and the school being stripped of funding?"
- "If a road-construction grant is used to fill potholes in a low-income neighborhood instead of a wealthy neighborhood, does that render it 'equity-related'?"
- "If a university grant helps fund the salary of a staff person who then helps teach college students about sexual harassment and the language of consent, would the funding for that person's salary be stripped as 'equity-related'?"
- "If a business with a grant from the Small Business Administration conducts a recruiting session at a historically Black college or university, could the business be stripped of the grant on that basis?"

Certification provision

The court also held that the plaintiffs had shown a likelihood of success on their claim that the certification provision – on its face – is a content-based restriction on the speech rights of federal contractors and grantees, and particularly so because the restrictions expand to all of the contractors' and grantees' work, regardless of whether the work is federally funded or not. The court stated that the certification provision "makes clear that the sole purpose of the provision, regardless of the individualized implementation by executive agencies, is for federal contractors and grantees to confirm under threat of perjury and False Claims Act liability that they do not operate any programs promoting DEI that the government might contend violate federal anti-discrimination laws."

Enforcement provision

Finally, the court held that the plaintiffs were likely to succeed on their claim that the enforcement provision threatens to "bring enforcement against perceived violators of undefined standards [which] on its face [constitutes] an unlawful viewpoint-based restriction on protected speech." The court held that the provision expressly targets and threatens the expression of views supportive of diversity, equity and inclusion (DEI), stating that the government has "made clear" that speech and viewpoints in favor or supportive of DEI or diversity, equity, inclusion and accessibility (DEIA) are "viewpoints the government wishes to punish and, apparently, attempt to extinguish." The court also held that the plaintiffs adequately showed a likelihood of irreparable harm – including the threat of loss of funds, uncertainty regarding future operations, loss of reputation and chilled speech.

Preliminary injunction order

The court issued a nationwide order providing that Trump administration defendants may not:

1. Pause, freeze, impede, block, cancel or terminate any awards, contracts or obligations, or change the terms of any current obligations, on the basis of the termination provision.
2. Require any grantee or contractor to make any "certification" or other representation pursuant to the certification provision.
3. Bring any False Claims Act enforcement action pursuant to the enforcement provision, including any action premised on certifications made pursuant to the certification provision.

Next steps

Although this ruling is an initial victory for DEI proponents, the court explicitly refused to enjoin the attorney general from preparing a report pursuant to Executive Order 14173 that identifies sectors of concern and the most egregious DEI practitioners in each sector, **or** investigating potential civil compliance investigations of illegal DEI practices in the private sector, citing "prudential and separation of powers reasons" for this determination. In addition, other portions of the orders remain in effect, including the revocation of Executive Order 11246's race and sex affirmative action plan requirements for federal contractors. Notably, the Trump defendants have appealed the order to the US Court of Appeals for the Fourth Circuit and filed a motion to stay the nationwide injunction during the appeal's pendency.

Regardless of the outcome of the pending appeal, employers also should keep in mind that the current administration is unlikely to stand down on anti-DEI efforts, and we can expect more directives to come from the administration on this topic. For example, it is unclear if and how this injunction will impact the enforcement of the anti-DEI "Dear Colleague Letter" issued by the US Department of Education on February 14, 2025, and summarized by the CooleyEd team in **this February 21 blog post**. In addition, private litigants, as well as various state attorneys general, will continue to bring legal challenges to employers' DEI efforts and DEI-related programs. Recent challenges have included shareholder derivative lawsuits, claims of "reverse" discrimination, and challenges to various DEI programs – including supplier diversity programs, sponsorship and grant programs, employment goals, and DEI trainings. And, shortly after her January 2025 appointment, the acting chair of the US Equal Employment Opportunities Commission **announced that her enforcement priorities** will include "rooting out unlawful DEI-motivated race and sex discrimination."

Thus, organizations should continue to review existing DEI policies and practices – with counsel – to ensure their programs remain lawful. Organizations also should continue to monitor this space and track legal developments, including further legal challenges to these executive orders. For example, a second lawsuit, *National Urban League et al. v. Trump*, No. 1:25-cv-00471, recently filed in the US District Court for the District of Columbia on February 19, 2025, by three nonprofit organizations, challenges these same executive orders, in addition to Executive Order 14168, "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government."

Please contact a member of **Cooley's DEI strategic counseling and litigation practice** if you have questions concerning how this decision could affect your organization.

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