Court blocks portions of Trump's DEI Executive Orders

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The first challenge to President Trump's Executive Orders targeting Diversity, Equity, and Inclusion in the private sector has resulted in a preliminary injunction.

As we previously reported, several organizations filed a lawsuit in federal court in Maryland challenging two of President Trump's Executive Orders. Judge Adam B. Abelson (a Biden appointee) ruled that certain provisions in the Executive Orders are unconstitutional and barred the federal government from enforcing them.

The operative provisions

The plaintiffs are the National Association of Diversity Officers in Higher Education, the American Association of University Professors, Restaurant Opportunities Center United, and the Mayor and City Council of Baltimore. They challenged specific portions of the Executive Orders.

With respect to Executive Order 14151, "***Ending Radical Government DEI Programs and Preferencing***," the plaintiffs challenged the provision directing the termination of all "equity-related" grants or contracts with the executive branch. (The court referred to this as the **Termination Provision**.)

With respect to Executive Order 14173, "***Ending Illegal Discrimination and Restoring Merit-Based Opportunity***," the plaintiffs challenged two provisions:

- That all grants and contracts include a clause requiring federal contractors and grantees "to agree that . . . compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions" for purposes of the False Claims Act and "to certify that [the contractor or grantee] does not operate any program promoting DEI that violates any applicable Federal anti-discrimination laws." (The court referred to this as the **Certification Provision**.)
- That the Attorney General "submit a report . . . containing recommendations for enforcing Federal civil rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI" and identify "specific steps or measures to deter DEI programs or principles (whether specifically denominated 'DEI' or otherwise) that constitute illegal discrimination or preferences. . . ." (The court referred to this as the **Enforcement Threat Provision**.)

The plaintiffs argued that these provisions violate the First Amendment right to free speech, the Fifth Amendment right to due process, and/or the separation of powers doctrine.

The court's ruling

Judge Abelson, who was just appointed to the bench in September 2024, wrote a 63-page opinion applying the principles of constitutional law to the challenged provisions. As a preliminary matter, he found that the plaintiffs demonstrated that they had standing to sue on behalf of their members.

In addressing the merits of the claims, Judge Abelson observed that neither Executive Order defined "equity-related" or DEI, nor did they identify the types of policies that the administration considers "illegal." He found that this deficiency leaves contractors and grantees "with no idea whether the administration will deem their contracts or grants, or work they are doing, or speech they are engaged in, to be 'equity-related.'" And the private sector is left "at a loss for whether the administration will deem a particular policy, program, discussion, announcement, etc. to be among the 'preferences, mandates, policies, programs, and activities' the administration now deems 'illegal.'"

Describing the hearing on the plaintiffs' motion for preliminary injunction, the court noted the following:

[W]hen the Court asked the government during the hearing a series of questions regarding hypothetical implementation of DEI by federal contractors and grantees, the government refused to even attempt to clarify what the Certification Provision means, or whether these hypothetical scenarios are legal. The government merely reiterated that promoting DEI can be unlawful and that there is uncertainty about whether programs or policies that are sometimes referred to as "DEI" are lawful after the Supreme Court's decision in *Students for Fair Admissions*. And the government did not dispute that the Certification Provision is being applied to current federal grantees and contractors that have already received and relied on federal funding, not just future grantees and contractors.

In granting the motion for a preliminary injunction, the court found that the plaintiffs were likely to succeed on the following claims:

- That the Termination Provision violates the First and Fifth Amendments.
- That the Certification Provision violates the First Amendment.
- That the Enforcement Threat Provision violates the First and Fifth Amendments.

In sum, the court ruled that these provisions impermissibly regulate speech and are impermissibly vague because they provide "insufficient notice to current grantees [and contractors] about whether and how they can adapt their conduct to avoid termination of grants or contracts."

Judge Abelson declined to opine on the plaintiffs' argument that the provisions violate the separation of powers doctrine, saying that it was not necessary in light of the other rulings.

However, Judge Abelson did deny the plaintiffs' request to enjoin the Attorney General from preparing a report recommending measures to end illegal discrimination in the private sector and from engaging in investigative activity.

Scope of preliminary injunction

The court determined that it was appropriate to apply the injunction not only to the plaintiffs, but also to similarly situated non-parties. Because the offending provisions affect *all* contractors, *all* grantees, and *all* private sector businesses that are subject to them, the court imposed a nationwide injunction to ensure consistency throughout the country.

What's next?

The court entered a preliminary injunction – which as its name implies – means that it is not a final determination. The parties will have the opportunity to present further evidence and arguments to the court as it determines whether a permanent injunction is appropriate. If the government is permanently enjoined from enforcing these provisions of the Executive Orders, it is most likely to appeal the ruling to the U.S. Court of Appeals for the Fourth Circuit and ultimately to the Supreme Court.

Thus, a final resolution is still months, if not years, away.

In addition, a similar action was filed in federal court in the District of Columbia by the National Urban League, the National Fair Housing Alliance, and the AIDS Foundation of Chicago. This matter was filed on February 19, and no response has yet been filed by the government.

But at least for now, contractors and grantees can step back and take a deliberate approach in assessing their DEI-related policies without fear of federal agreements being canceled or of claims under the False Claims Act related solely to their DEI practices.

We will continue to keep you informed of developments on this front.

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