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Lawsuit Challenges DEI Executive Orders



On February 3, 2025, the city of Baltimore and three organizations filed a lawsuit in the U.S. District Court for the District of Maryland opposing the recent new administration executive orders (EO) focused on eliminating diversity, equity, inclusion, and accessibility (DEIA) efforts in the federal government and for federal contractors and private employers.

Along with the city of Baltimore, the American Association of University Professors, the Restaurant Opportunities Centers United, and the National Association of Diversity Officers in Higher Education have sued President Trump and many federal agencies and governmental offices. The lawsuit focuses on the unconstitutionality of two EOs: EO 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing; and EO 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity. Plaintiffs are represented by Democracy Forward and Asian Americans Advancing Justice – AAJC. Plaintiffs have asked the court to declare both EOs unconstitutional and seek to enjoin enforcement of the orders by any defendant other than the president.

The complaint details the role diversity, equity, and inclusion (DEI) principles play in the plaintiffs' work as government officials, university professors, labor advocates, and diversity officers. The complaint seeks to establish that these EOs have wide-reaching implications for government programs, educational institutions, and the private sector. Plaintiffs bring the following claims:

- **Violation of Separation of Powers:** Plaintiffs allege that Section 2 of EO 14151, which directs the Office of Management and Budget to terminate funding for governmental DEI, DEIA, and environmental justice programs, violates the Spending Clause by usurping the spending power vested exclusively in Congress, as it directs the president and the executive branch to terminate grants and contracts related to DEIA without express statutory authority. Relatedly, plaintiffs also allege that Section 3 of EO 14173 unlawfully seeks to impose restrictions on the receipt of federal funds in violation of the spending powers vested in Congress.

- **Violation of Due Process Under the Fifth Amendment:** Plaintiffs allege that Section 2 of EO 14151 suffers from unconstitutional vagueness because it fails to define key terms, lacks clarity regarding how and when adverse actions for failing to comply will occur, and is drafted in a manner that is open to “subjective interpretation and discriminatory enforcement.” The American Association of University Professors and the National Association of Diversity Officers in Higher Education also allege that Section 4 of EO 14173, which targets private employers’ DEI efforts, fails to define key terms or provide criteria for how the attorney general and each agency head will identify entities for “civil compliance investigations,” rendering this provision unconstitutionally vague and vulnerable to arbitrary enforcement.
- **Violation of Freedom of Speech Under the First Amendment:** Plaintiffs allege that Section 3 (addressing the private sector) and Section 4 (addressing federal contractors and subcontractors) of EO 14173 unlawfully restrict constitutionally protected speech based on content and viewpoint and that Section 3 will have a chilling effect on participation in anything related to DEIA, as the EO fails to define key terms or provide guidance on how plaintiffs can determine if their programs are compliant.

For now, employers should watch closely as this lawsuit progresses, particularly as the court may enjoin these EOs. There may also be similar litigation filed by related affected groups in other jurisdictions. Perkins Coie will continue to track the ongoing developments in the new administration’s approach to DEI efforts and will closely monitor developments in this litigation and any similar litigation filed. Please contact the firm to discuss any questions about compliance with these EOs should they arise.

Please see our other guidance including our [proxy season considerations](#) and [congressional efforts](#) in this area. If you have any questions, please contact the firm.

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