Blogs
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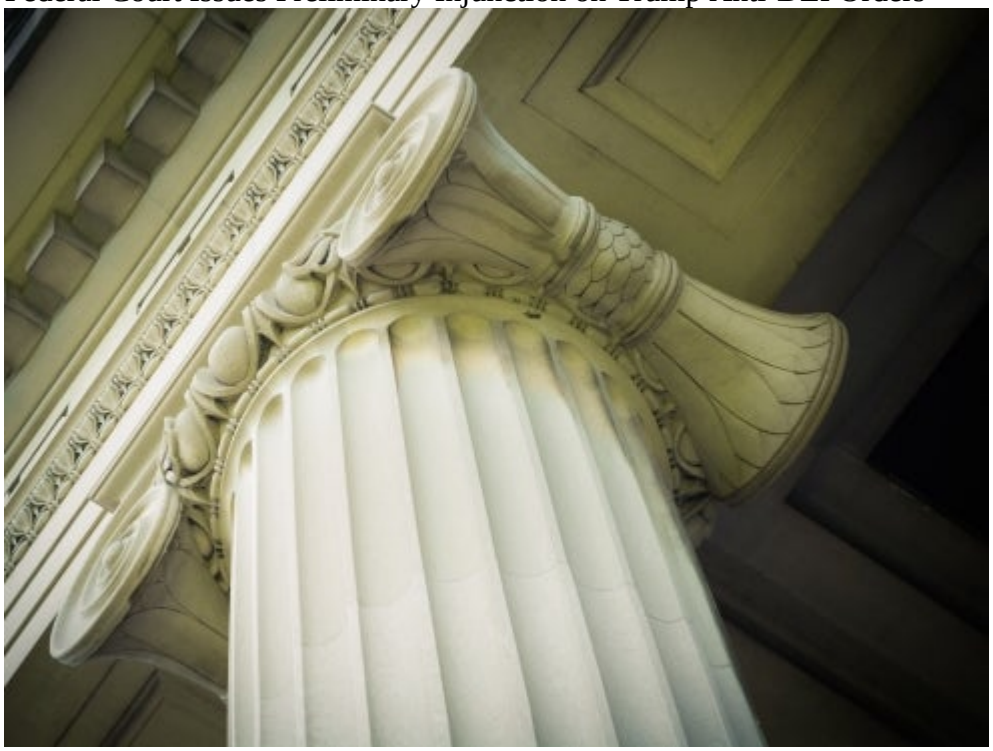
Federal Court Issues Preliminary Injunction on Trump Anti-DEI Orders



On February 21, 2025, the U.S. District Court for the District of Maryland issued a preliminary injunction in favor of Plaintiffs National Association of Diversity Officers in Higher Education, the American Association of University Professors, Restaurant Opportunities Centers United, and the mayor and city council of Baltimore, Maryland.

The preliminary injunction applies nationwide to all similarly situated organizations, including grant recipients and federal contractors, but appeals are already underway.

Below we provide a synopsis of this much-anticipated decision.

What provisions were the plaintiffs challenging?

As outlined in a previous blog post, plaintiffs in *NADOHE v. Trump* quickly challenged the constitutionality of two executive orders (EOs) targeting DEI practices that were issued in the first days of the second Trump administration: EO 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing; and EO 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity. The EOs, which have broad application, target federal government initiatives, federal contractor and subcontractor obligations, and even private entities' DEI programs.

Specifically, plaintiffs in *NADOHE v. Trump* have challenged the constitutionality of the EOs by lasering in on three key provisions: Section 2 of EO 14151, the "Termination Provision"; Section 3 of EO 14173, the "Certification Provision"; and Section 4 of EO 14173, the "Enforcement Threat Provision."

What arguments did the plaintiffs raise against these provisions?

Regarding the Termination Provision, which sets forth implementation requirements for EO 14151, Plaintiffs alleged that the Termination Provision is unconstitutional because it violates:

- The spending clause by directing the executive branch to terminate grants and contracts without statutory authority from Congress; and
- The Fifth Amendment's promise of due process as an unconstitutionally vague provision open to "subjective interpretation and discriminatory enforcement."

Similarly, plaintiffs alleged that the Certification Provision, which requires federal contracts and grants to include new language certifying that funds recipients do not "operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws," is unconstitutional because it violates:

- Separation of powers principles by imposing restrictions on the receipt of federal funds without congressional authority to do so; and
- The First Amendment by mandating content- and viewpoint-based speech restrictions.

Lastly, Plaintiffs challenged the "Enforcement Threat Provision, which directs the attorney general to create a list of entities to be targeted for potential "civil compliance investigations," arguing that the provision is unconstitutional because it violates:

- The First Amendment by impermissibly mandating content- and viewpoint-based restrictions on speech; and
- The Fifth Amendment due to being unconstitutionally vague.

How did the district court rule?

The district court found that (i) the plaintiffs were likely to succeed on their constitutional claims; (ii) the plaintiffs—and similarly situated non-parties nationwide—were likely to suffer irreparable harm as a result of the EOs; and (iii) the balance of equities and the broader public interest weighed in favor of issuing a preliminary injunction to stop enforcement of the at-issue provisions. Accordingly, the district court issued a nationwide preliminary injunction, applicable not only to the plaintiffs but also to all similarly situated non-parties.

Specifically, the court ordered that defendants, the Trump administration, and "other persons who are in active concert or participation with Defendants" shall not, with respect to the plaintiffs or any similarly situated non-parties:

- "pause, freeze, impede, block, cancel, or terminate" awards, contracts, or obligations pursuant to the Termination Provision;
- require grantees or contractors to make certifications as mandated by the Certification Provision; or
- bring any enforcement action pursuant to the Enforcement Threat Provision.

How did the district court analyze the EOs?

In analyzing the EOs, the court found that the term "'equity-related' grants or contracts" in the Termination Provision would likely "invite[] arbitrary and discriminatory enforcement" and fail to provide sufficient notice to federal grantees and contractors regarding how to legally comply with the EO. As a result, the court ruled that the Termination Provision is likely unconstitutionally vague.

When analyzing the Certification Provision, which it found likely constituted an unconstitutional content-based speech restriction, the district court cited the administration's unwillingness to clarify the meaning of the Certification Provision when posing hypothetical scenarios at oral arguments. Here, the district court also considered how the threat of perjury or False Claims Act liability may cause federal contractors or grantees to more broadly "self-censor" their own speech to mitigate risk.

Finally, when finding that the Enforcement Threat Provision likely violates the First Amendment as an unconstitutional "textbook" viewpoint-based restriction and a content-based restriction, the district court not only noted that the provision targeted "pure private speech" by regulating the speech of private corporations that do not receive federal funds but also that, by limiting the expression of views supportive of DEI principles, the provision had the potential to chill even lawful speech. The district court further found that these speech restrictions were not narrowly tailored. Separately, by failing to clearly define the conduct prohibited by the EO, the district court also found that the Enforcement Threat Provision likely violates the Fifth Amendment's due process requirements.

The district court did not reach the separation of powers questions.

What comes next?

The Trump administration promptly appealed the decision to the U.S. Court of Appeals for the Fourth Circuit on February 24, 2025. Moreover, although the government is currently enjoined from taking enforcement action against private corporations, federal contractors, and grant-recipients, the attorney general is not enjoined from preparing the report outlined in the Enforcement Threat Provision or from engaging in investigation. As a result, private corporations will still need to keep an eye out for the forthcoming list. At least for now, though, federal contractors and grant recipients will have some reprieve from further enforcement actions based on the EOs.

Perkins Coie will continue to closely track the many ongoing developments in the DEI legal context.

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