Federal Court Blocks Key Aspects of Executive Orders Targeting DEI Programs

On February 21, the U.S. District Court for the District of Maryland issued a nationwide preliminary injunction against three key provisions of two executive orders issued by President Trump that aim to terminate, restrict, and deter diversity, equity, and inclusion (DEI) programs in the federal government and the private sector. The challenged executive orders are Executive Order 14151, "Ending Radical and Wasteful Government DEI Programs and Preferencing," and Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity."

In granting its preliminary injunction, the court found that the plaintiffs, who include national associations of diversity officers, university professors, and restaurant workers, as well as the city of Baltimore, are likely to succeed on their claims that the challenged provisions violate the First and Fifth Amendments of the U.S. Constitution.

The court enjoined the following provisions:

- The "Termination Provision" of Executive Order 14151, which directs federal agencies to terminate all "equity-related" grants or contracts. The court held that this provision is unconstitutionally vague and fails to provide fair notice and clear standards to current grantees and contractors and, therefore, invites arbitrary and discriminatory enforcement.
- The "Certification Provision" of Executive Order 14173, which requires federal contractors and grantees to make two certifications in future contracts and award documents: (1) that they do **not** operate any programs promoting DEI that violate any applicable federal anti-discrimination laws; and (2) that their compliance "in all respects" with federal anti-discrimination laws is material to the government's payment decisions. The Certification Provision makes specific reference to the False Claims Act with respect to the required certifications. The court held that this provision constitutes a discriminatory restriction on protected speech that chills the expression of DEI-related topics and principles, and that it also violates the separation of powers by imposing conditions on federal spending that were not authorized by Congress.
- The "Enforcement Threat Provision" of Executive Order 14173, which directs the attorney general to submit a report containing recommendations and a plan for enforcing federal civil rights laws and taking other measures to encourage the private sector to end illegal discrimination and preferences, including DEI, and to identify potential civil compliance investigations of various entities, such as public corporations, large foundations and nonprofit organizations, and institutions of higher education. The court held, however, that this provision is also an impermissible viewpoint-based and content-based restriction on protected speech and is unconstitutionally vague, as it fails to define the key terms and standards for determining what constitutes illegal DEI.

The court's injunction applies to all of the named government defendants except for the president himself. While the court enjoined the Termination and Certification Provisions in their entirety, it only blocked a portion of the Enforcement Threat Provision. Specifically, the court did not enjoin the attorney general from preparing the report required by the Enforcement Threat Provision or conducting the investigations called for in that provision. However, the attorney general is enjoined from taking any enforcement actions pursuant to the Enforcement Threat Provision.

The injunction has nationwide effect and applies to all federal contractors and grantees as well as other private entities that may be subject to the Enforcement Threat

Provision. The injunction does not affect other aspects of the executive orders that are not challenged by the plaintiffs, such as directives to assess the operational impact and cost of DEI programs and policies, the revocation of Executive Order 11246 and its federal contractor affirmative action requirements, and the directive to excise references to DEI principles from federal acquisition and contracting procedures.

The preliminary injunction will remain in effect until the court issues a final judgment on the merits of the case or until further order of the court. The Trump administration has 60 days to appeal the injunction to the U.S. Court of Appeals for the Fourth Circuit.

While the injunction provides a temporary reprieve for many organizations subject to the DEI executive orders, the case is likely to generate further litigation and controversy as it proceeds to the appellate stage. Additionally, the executive orders are currently subject to another legal challenge filed last week in Washington, D.C. federal court. We will continue to monitor and assess the Trump administration's efforts to roll back DEI initiatives across the country and will provide updates on any further developments.

FOR MORE INFORMATION

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