LEGAL UPDATES

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Fourth Circuit Stays Preliminary Injunction That Blocked Key Portions of Anti-DEI Executive Orders

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On March 14, 2025, the U.S. Court of Appeals for the Fourth Circuit granted the federal government's request to stay, pending appeal, a nationwide preliminary injunction issued by the U.S. District Court for the District of Maryland in the case *National Association of Diversity Officers in Higher Education, et al. v. Trump, et al.* The district court had enjoined the federal government from enforcing the termination provision, the certification provision, and the enforcement threat provision from Executive Orders 14173 and 14151, which prohibit "illegal" diversity, equity, and inclusion (DEI) activities. As a result of the stay, the federal government may proceed to enforce each executive order (E.O.)—and terminate federal contracts and grants and require grantees and contractors to certify under threat of False Claims Act liability that they do not operate programs promoting DEI that violate any applicable federal anti-discrimination laws—while the appeal proceeds on an expedited basis.

Background

On February 21, 2025, the U.S. District Court for the District of Maryland issued a nationwide preliminary injunction prohibiting the federal government from enforcing three key provisions from E.O. 14173 (Ending Illegal Discrimination and Restoring Merit-Based Opportunity - January 21, 2025) and E.O. 14151 (Ending Radical and Wasteful Government DEI Programs and Preferencing - January 20, 2025). The district court found that the specified provisions of the executive orders—the termination provision, the certification provision, and the enforcement threat provision—likely violated the First Amendment of the U.S. Constitution by imposing unconstitutional restrictions

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on content and viewpoint speech and likely violated the Due Process Clause of the Fifth Amendment because key terms such as "illegal DEI" were void for vagueness.

The government appealed the district court's preliminary injunction to the Fourth Circuit, arguing that the challenged provisions of E.O.s 14173 and 14151 were limited in scope in that the certification and enforcement threat were limited to conduct that violates already existing federal anti-discrimination laws. The government also contended that the executive orders' termination provision authorized termination of grants not based on a grantee's speech or activities but based on the nature of the grant-funded activity itself.

The Fourth Circuit's ruling

A three-judge panel of the Fourth Circuit determined that the government had satisfied the factors needed to establish a sufficient likelihood of success for the government to stay the preliminary injunction until the court can hear and decide the appeal. While the panel was unanimous in its decision to stay the preliminary injunction, each judge filed a separate concurring opinion. Concurring opinions by two of the three judges came with a "caveat" indicating that federal government action beyond the limited scope of the executive orders "may well implicate cognizable First and Fifth Amendment concerns."

Judge Harris noted in her concurrence, "What the orders say on their face and how they are enforced are two different things. Agency enforcement actions that go beyond the orders' narrow scope may well raise serious First Amendment and Due Process concerns, for the reasons cogently explained by the district court."

What this means to you

The Fourth Circuit ordered expedited briefing for the full appeal of the preliminary injunction. The government's opening brief is now due April 8, 2025, and the plaintiff's response brief is due May 8, 2025.

Until the Fourth Circuit resolves the appeal and the case is remanded back to the district court, businesses should resume the DEI review activities they initiated immediately after the executive orders were issued and continue to review and evaluate their DEI, employment, and supplier diversity policies to ensure they do not potentially violate any federal anti-discrimination laws, with the assistance of counsel to maintain attorney-client privilege. Businesses with federal contracts or grants are likely to face heightened scrutiny and be required to sign False Claims Act like certifications related to their compliance with federal anti-discrimination laws and should prepare accordingly with the assistance of counsel.

Contact us

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If you have any questions about the orders or the injunction, please contact Michael Schrier, Tracey O’Brien, Nora Evans, or your Husch Blackwell attorney.

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