

PENDULUM SWINGING: FOURTH CIRCUIT FOR NOW REINSTATES TRUMP ADMINISTRATION'S DE&I EXECUTIVE ORDERS

On March 14, 2025, a [three-judge panel](#) of the Fourth Circuit stayed the [preliminary injunction](#) that a Maryland federal district court ordered in February enjoining the implementation of EO 14151 and EO 14173 (which we wrote about [here](#)). The EOs required (1) agencies to terminate “equity-related” grants or contracts (“**Termination Provision**”); (2) federal contractors or fund grantees to certify that they are not operating unlawful programs that “promote” DE&I (“**Certification Provision**”); and (3) that the U.S. Attorney General “encourage” the private sector to end DE&I initiatives under threat of enforcement (“**Enforcement Threat Provision**”). As a result, the Administration for now can move forward with the implementation of the EOs. The Fourth Circuit expressly noted that it was not addressing whether the way the EOs are implemented by the agencies will be consistent with the First and Fifth Amendments, setting up the likelihood of further challenges.

In temporarily halting these directives, District Judge Abelson of Maryland held that the Executive Orders likely violated the First and Fifth Amendments by chilling free speech and being unconstitutionally vague.

However, on March 14, hours after the District Court Judge Abelson raised concerns over reports that federal agencies were potentially violating his preliminary injunction, the Fourth Circuit ruled that the government had met its burden to stay that injunction. In doing so, all three judges on the Fourth Circuit panel issued separate concurring opinions. Ultimately, the panel emphasized that while actions taken by federal agencies pursuant to these orders could be unconstitutional, the orders themselves are not unconstitutional on their face. As such, for now, the Trump administration's ban on DE&I programming that is deemed to be illegal stands.

The Fourth Circuit's decision allows the federal government to immediately begin enforcing the challenged provisions of the Executive Orders while the appeal is pending. This means that agencies may commence terminating "equity-related" grants or contracts and requiring certifications that grant recipients and contractors are not operating "unlawful" programs promoting DE&I. Additionally, the decision may encourage other efforts to curtail DE&I programs in both the public and private sectors, as it notably reinstates the U.S. Attorney General's ability to use threat of enforcement to "encourage" the private sector to end DE&I initiatives.

Following the court's ruling, on March 19, 2025, the U.S. Equal Employment Opportunity Commission ("**EEOC**") and the U.S. Department of Justice ("**DOJ**") released [two technical assistance documents](#) clarifying what constitutes unlawful discrimination related to DE&I in the workplace. Deputy Attorney General Todd Blanche confirmed "the technical assistance document provides clear information for employees on how to act should they experience unlawful discrimination based on DEI practices."

The broader legal battle over President Trump's DE&I-related executive orders is likely to continue, with potential appeals to higher courts, including the U.S. Supreme Court. Several other cases challenging the DE&I Executive Orders could produce other preliminary injunctions. As these cases progress, the result may be a fragmented patchwork of judicial decisions, leading to varying enforcement and compliance requirements across different jurisdictions. We will continue to closely monitor these developments.

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