



NONPROFITS: POLITICAL ISSUES

# How a State AG Can Short-Circuit A Fed Executive Order

11.23.25 | Linda J. Rosenthal, JD



It's been a grueling twelve months since Election Day 2024.

Certainly, there was warning ahead of the presidential election there would be major upheavals on the agenda, but even the [900-page roadmap](#) posted online earlier in the campaign was inadequate to avert the outcome.

The administration returning to power unleashed a Shock-and-Awe 2.0 blitz right out of the gate at noon on Inauguration Day. But it came faster and more furiously than expected – or hoped.

In [The Charitable-Sector Pushback Against the Administration: One Year Post-Election](#) (November 12, 2025), we applauded the aggressive response on behalf of American philanthropy by the [National Council of Nonprofits](#) and the [Democratic Attorneys General Association](#).

The primary strategy is, and continues to be, litigation either in defense or on offense. To get a sense of the size and complexity of the lawsuits in progress, see the excellent chart [now updated through November 21, 2025] by the organization [Just Security: Litigation Tracker: Legal Challenges to Trump Administration Actions](#). It's broken down by topic areas; the chart section on claims against the Trump administration on D.E.I. issues runs several pages long.

As we explained in [the November 12th post](#), litigation has not been the only pushback strategy by the organized charitable community and our allies in blue-state justice departments around the United States. "It's critical," we wrote, "for all resisters to creatively use each and every arrow in their quivers, aiming strategically to hit the various targets."



There, we mentioned a noteworthy example: a counter-attack not based on litigating the meaning and effect of a governing statute, regulation, or other official source document like a presidential executive order. Instead, it springs from the inherent jurisdiction and authority of sympathetic state attorneys general to – shall we say – cut the power cords at their ends.

We now return for a closer look.

### ***Setting the Stage***

On Inauguration Day 2025, the stars over Washington, D.C. were aligned firmly in favor of the GOP true believers. In those early hours, the White House released the first two DEI-related “presidential actions.” See *Ending Radical And Wasteful Government DEI Programs And Preferencing* (January 20, 2025) and *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, (January 21, 2025).

An executive order or “presidential action” signed in the Oval Office and published in the Federal Register has the force of law, provided it is based on the President’s constitutional authority or a power delegated by Congress. (Litigation most often arises in connection with that second half of the sentence.)

Anyone who has taken even a quick peek at Project 2025 well understands the fervor with which the “Heritage Foundation and the 100+ organizations that make up the Project 2025 Advisory Board” want to turn back the clock on Diversity, Equity, and Inclusion. It’s been a wish-list item for the conservative faithful for many decades. See, e.g., *The Impact of Project 2025 on DEI Initiatives, Explainer*, The Advancing DEI Initiative, *Meltzer Center for Diversity, Inclusion, and Belonging at NYU School of Law*.

See *The People’s Guide to Project 2025*, (2024) *Democracy Forward* [“...Proposals from Project 2025 that they claim could be implemented through executive branch action alone – so without new legislation – include: \* \* \* Roll back civil rights protections across multiple fronts, including cutting diversity, equity, and inclusion-related (DEI) programs and LGBTQ+ rights in health care, education, and workplaces.”]

The experts at NYU Law’s Meltzer Center explain that “...Project 2025’s Diversity, Equity, and Inclusion recommendations fit into four main categories: (1) Abolishing DEI offices and personnel; (2) Ending the government’s participation in DEI initiatives; (3) Amending laws to align with a conservative vision of nondiscrimination; and (4) Taking enforcement action against organizations that engage in DEI.”

### ***Avalanche of Orders***

“Through a flurry of orders, the new president quickly began driving the country in a different direction on many contentious issues,” wrote Michael E. Shear in *Here’s How President Trump Shifted Policy in His First Week* (January 25, 2025) *The New York Times*. Trump had “vowed to radically reshape American life, culture, and politics if he got another chance.”

The “first week has demonstrated that he will seek to do just that – and fast.” While “[n]ot all of his directives will succeed in the end..., the United States is a different place than it was a week ago.” Among many other changes, “...[d]iversity efforts in the federal government have been dismantled,



and employees turned into snitches.”

These Trump 2.0 administration executive orders “...targeting diversity, equity, inclusion, and accessibility (DEIA) initiatives take a ‘shock and awe’ approach that upends longstanding, bipartisan federal policy meant to open doors that had been unfairly closed.” *Trump’s Executive Orders Rolling Back DEI and Accessibility Efforts, Explained* (January 24, 2025) ReNika Moore, Esq., *ACLU*.

“With these actions,” Ms. Moore explained, “the administration is not only undoing decades of federal anti-discrimination policy, spanning Democratic and Republican presidential administrations alike, but also marshalling federal enforcement agencies to bully both private and government entities into abandoning legal efforts to promote equity and remedy systemic discrimination.”

See also *How Trump Upended 60 Years of Civil Rights in Two Months* (June 27, 2025) Nikole Hannah-Jones, *Essay, The New York Times* [“For more than 60 years, [a Lyndon-Johnson-era] executive order helped many thousands of workers who had endured discrimination. Yet despite the law, research shows that Black Americans continue to face pervasive employment discrimination at a rate that has not declined since the late 1980s.” Nevertheless, “[o]n his second day in office, President Donald Trump labeled [... regulatory ...] efforts to enforce the 1964 Civil Rights Act illegal and discriminatory — presumably against white people. He signed his own executive order revoking Johnson’s on behalf of, as he put it, ‘hardworking Americans who deserve a shot at the American dream.’”

### ***Court Challenges***

On Inauguration Day 2025, some 25 or so “presidential actions” (a term that includes but is not limited to executive orders) flew out of the windows of the Oval Office. There were more the following day.

In these initial batches were the items mentioned earlier in this post that set off the anti-D.E.I. assault. They have been challenged in court – see Chart – on a variety of bases including because they are rambling and incoherent tirades. For example, an expert in employment law has pointed out that “Executive Order 14173, signed by the President on January 21, 2025, directed Federal agencies to ‘combat illegal private-sector DEI preferences, mandates, policies, programs, and activities.’ EO 14173, however, did not specify what DEI practices would be considered illegal.”

Numerous federal judges – in a variety of lawsuits against the administration covering a broad range of presidential actions – have ruled that various orders are impermissibly vague and ambiguous. See the Litigation Tracker chart that has the lawsuits arranged by topic areas including the pages-long section for the D.E.I. issue. “It’s no secret that DEI has become a political hot-topic, with abundant headlines and opinions.”

### ***Back to That Example***

The administration is not backing down even in the face of some adverse court decisions. The D.E.I. bullseye is large. A particular favorite is the scholarship that is aimed at, or restricted to, “protected classes.”



For instance, on July 29, 2025, Attorney General Pam Bondi issued a 9-page “Memorandum for all Federal Agencies” titled Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination. The opening paragraph reveals a continued – even emboldened – hardline stance: “One of our Nation’s bedrock principles is that all Americans must be treated equally. Not only is discrimination based on protected characteristics illegal under federal law, but it is also dangerous, demeaning, and immoral....”

The Attorney General added: “Yet in recent years, the federal government has turned a blind eye toward, or even encouraged, various discriminatory practices, seemingly because of their purportedly benign labels, objectives, or intentions. No longer. Going forward, the federal government will not stand by while recipients of federal funds engage in discrimination.”

Several pages into the Memorandum, AG Bondi gave examples of particular practices that DOJ has in its sights. In “Section IV. Unlawful Discriminatory Policies and Practices,” subsection (A)(2), “Examples of Unlawful Practices,” lists “Race-Based Scholarships or Programs.” The Department of Justice relies for support of its position on the controversial 2023 Supreme Court decision in Students For Fair Admissions, Inc. v. Harvard (“SFFA”).

A few weeks later, in Memorandum to “Entities holding charitable funds (August 20, 2025), a coalition of ten state attorneys general [Minnesota, New York, California, Connecticut, Delaware, Maryland, Nevada, Oregon, Vermont, and Washington] fired back at the Bondi Memorandum and the administration’s entire anti-D.E.I. fixation.

These blue attorneys general presented two key points. First, they discussed why the government’s position on Diversity, Equity, and Inclusion is unsupportable and extreme, particularly on the topic of “race-based scholarships and programs.” Specifically, these charity regulators explained how and why Students For Fair Admissions, Inc. v. Harvard is inapplicable to these scholarship situations.

Second, they argued in detail why the federal position, particularly as to donor-restricted scholarships, impermissibly undermines state philanthropy and trust law as well as the unique duty and authority of the state AGs to enforce donor intent. More particularly, without the consent and cooperation of the state attorney general, there is little chance of success in modifying or eliminating a donor restriction.

### ***Conclusion***

Next up, we’ll elaborate on that August 20th Memorandum, first covering the argument that state law and the state attorney general may be able to trump (pun intended) the administration’s hard-line position on race-based scholarships and programs.

– Linda J. Rosenthal, J.D., FPLG Information and Research Director