

# DISMANTLING DIVERSITY: UNPACKING TRUMP'S EXECUTIVE ORDER TO END DIVERSITY, EQUITY & INCLUSION

By: Kylie N. Lovelace, Staff Editor, Vol. 31<sup>1</sup>

The 2024 election crashed over the nation with a red wave. As the waves crashed to the nation's shore, so did numerous executive orders. "By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered," are the words before President Trump's impactful Executive Order 14151.<sup>2</sup> This Presidential order is responsible for terminating all mandates, policies, programs, preferences, and activities in relation to diversity, equity, and inclusion (hereinafter D.E.I.).<sup>3</sup> Some citizens are up in arms, others are thrilled. The following is an analysis of the ongoing debate and retreat from DEI initiatives, highlighting a critical turning point in the public conversation about diversity and inclusion.

## I. THE SCOPE OF INHERENT PRESIDENTIAL POWERS: EXECUTIVE ORDERS

The powers of the President are vested in Article II § 1 of the United States Constitution.<sup>4</sup> However, there is no explicit mention of the power of the President to create executive orders.<sup>5</sup> The inherent power to issue executive orders relies on historical practice, executive interpretations, and court decisions.<sup>6</sup> This power includes the Take Care Clause, which orders "the President 'shall

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<sup>2</sup> Exec. Order No. 14151, 90 FR 8339 (2025).

<sup>3</sup> *Ending Radical and Wasteful Government DEI Programs and Preferencing*, WHITE HOUSE (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/>.

<sup>4</sup> U.S. CONST. art. II § 1.

<sup>5</sup> Scott Bomboy, *Defining the President's Constitutional Powers to Issue Executive Orders*, NAT'L CONST. CTR. (Jan. 29, 2025), <https://constitutioncenter.org/blog/defining-the-presidents-constitutional-powers-to-issue-executive-orders>.

<sup>6</sup> *Id.* "The president has two primary sources of power to issue directives and executive orders: the Constitution and powers granted to the president by Congress. This was stated in the *Youngstown Sheet and Tube Co. v. Sawyer* (1952) Supreme Court decision by Justice Hugo Black: 'The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.'" *Id.*

take Care that the Laws be faithfully executed,” meaning the President has a duty to ensure laws are enforced.<sup>7</sup> The adoption of this power to issue executive orders is grounded in the Constitution under the President's broad ability to issue directives.<sup>8</sup> Executive orders consist of written and signed directives from the President that apply to the federal government and are revocable at any time by the President.<sup>9</sup>

## II. WHAT IS DEI?

### A. *Evolution of DEI*

Diversity, equity, and inclusion are three simple words that carry the weight of a major controversy within the country. The commencement of DEI programs is said to have its roots established in the Civil Rights Act of 1964, making employment discrimination due to race, color, sex, religion, or national origin illegal for employers with more than 15 employees.<sup>10</sup> Since the enactment of the Civil Rights Act, DEI has expanded to encompass a wide variety of minority groups as programs have been integrated into both the public and private sectors.<sup>11</sup> Today, DEI programs are purported to be organizational frameworks that seek to promote the fair treatment and full participation of all people, particularly groups who have historically been underrepresented or subject to discrimination based on identity or disability.<sup>12</sup> Therefore, the question to be asked is: why is DEI so controversial?

### B. *Naysayers of DEI*

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<sup>7</sup> Logan Hovie, *A Tragedy of Novelty: Is For-Cause Removal Protection for the Consumer Financial Protection Bureau's Single Director a Fatal Flaw?*, 60 B.C. L. REV. 100, 109 (2019).

<sup>8</sup> Bomboy, *supra* note 5.

<sup>9</sup> *Executive Orders*, U.S. DEP'T OF JUST., <https://bja.ojp.gov/program/it/privacy-civil-liberties/authorities/executive-orders> (last visited Apr. 28, 2025).

<sup>10</sup> *Civil Rights Act (1964)*, NAT'L ARCHIVES, <https://www.archives.gov/milestone-documents/civil-rights-act> (last visited Apr. 28, 2025).

<sup>11</sup> Julie Kratz, *The Little Known History of DEI and Why It's Critical to Its Survival*, FORBES (Dec. 29, 2024), <https://www.forbes.com/sites/juliekratz/2024/12/29/history-of-dei-why-it-matters-for-the-future/>.

<sup>12</sup> *DEI*, DICTIONARY, <https://www.dictionary.com/browse/dei> (last visited Apr. 28, 2025).

Critics of DEI programs echo the sentiment that they are ineffective and do not produce measurable improvements in diversity and inclusion in the workplace.<sup>13</sup> According to the Harvard Business Review, it should come as no surprise that most DEI programs are not increasing diversity due to companies using ineffective tactics that have not worked for decades.<sup>14</sup> Many DEI training programs utilized by employers attempt to police people's thoughts and actions, and studies show "this kind of force-feeding can activate bias" rather than deter it.<sup>15</sup> The benefits of DEI are not long-lasting, rarely lasting more than a few days, and studies suggest that it can initiate bias or backlash.<sup>16</sup> Companies nonetheless continue to implement DEI programs, which in turn have negatively impacted marginalized groups and do not work towards increasing diversity in the workplace.<sup>17</sup>

DEI critics push the sentiment that such programs undermine meritocracy.<sup>18</sup> Dr. Shann Patel emphasizes this notion in his article, stating how DEI programs focus on "group identities and demographic characteristics."<sup>19</sup> DEI programs "often involve quotas or preferential treatment based on race, gender, or other factors, which can undermine the principle of meritocracy."<sup>20</sup> The "Gender Mandate" Bill signed by the California Legislature in 2018 illustrates this point.<sup>21</sup> This bill imposed "diversity quotas on private corporations . . . requiring all publicly held companies with their principal executive offices in California to have at least one woman director; two if the

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<sup>13</sup> Frank Dobbin & Alexandra Kalev, *Why Diversity Programs Fail*, HARVARD BUS. REV. (July 2016), <https://hbr.org/2016/07/why-diversity-programs-fail>

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Shaan Patel, *Why DEI is Destroying Meritocracy and How DEI Can Save Us*, PREP EXPERT (Jul. 8, 2024), <https://prepexpert.com/why-dei-is-destroying-meritocracy-and-how-dei-can-save-us/>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Shirley N. Weber, *Woman on Boards*, SEC'Y OF STATE, <https://www.sos.ca.gov/business-programs/women-boards> (last visited Apr. 28, 2025).

company has five board members; and three if the company has six or more board members.”<sup>22</sup> Following this law was the “Diversity Mandate,” signed into effect in 2020, requiring “public companies with California headquarters to have at least one board member who identifies as a racial or ethnic minority or as gay, lesbian, bisexual, or transgender.”<sup>23</sup>

Mandates, such as the ones enacted in California, are explicitly unconstitutional.<sup>24</sup> The Equal Protection Clause within the Fourteenth Amendment explicitly states that no state shall “deny to any person within its jurisdiction the equal protection of the laws.”<sup>25</sup> The Supreme Court has consistently held that such quotas are unconstitutional, and California courts have specifically struck down these mandates as violating the Equal Protection Clause and the California Constitution.<sup>26</sup>

Following President Trump’s lead, major companies like Facebook and Instagram disbanded their DEI programs.<sup>27</sup> Meta, the parent company of Facebook and Instagram, will no longer have hiring goals based on race or gender.<sup>28</sup> Instead, their approach will focus on programs that “apply fair and consistent practices that mitigate bias for all, no matter your background.”<sup>29</sup> Corporations such as McDonald’s, Ford, Google, Amazon, and Walmart are also revoking

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<sup>22</sup> Andie Kramer, *Mandated Quotas Won’t End Inequalities in Business Leadership*, FORBES (June 23, 2022), <https://www.forbes.com/sites/andiekramer/2022/06/23/mandated-quotas-wont-end-inequalities-in-business-leadership/>; Weber, *supra* note 21.

<sup>23</sup> Kramer, *supra* note 17; David A. Bell et al., *New Law Requires Diversity on Boards of California-Based Companies*, HARVARD L. SCH. F. ON CORP. GOVERNANCE Oct. 10, 2020), <https://corpgov.law.harvard.edu/2020/10/10/new-law-requires-diversity-on-boards-of-california-based-companies/>.

<sup>24</sup> See U.S. CONST. amend. XIV.

<sup>25</sup> *Id.*

<sup>26</sup> See generally *Regents of the University of California v. Bakke*, 438 U.S. 265, 323 (1978) (“It is far too late to argue that the guarantee of equal protection to all persons permits the recognition of special wards entitled to a degree of protection greater than that accorded to others.”). This Court struck down a university’s racial quota system, stating that while race could be considered as a factor in admissions, quotas were not permissible. Zachary V. Zaggar, *California Courts Strike Down Laws Requiring More Women and Diversity on Boards*, OGLE TREE (June. 2, 2022), <https://ogletree.com/insights-resources/blog-posts/california-courts-strike-down-laws-requiring-more-women-and-diversity-on-boards/>.

<sup>27</sup> Jessica Guynn, *Facebook Owner Meta Kills DEI in Latest Nod to Trump and MAGA Movement*, USA TODAY, <https://www.usatoday.com/story/money/2025/01/10/meta-cancels-dei/77598458007/> (Jan. 10, 2025).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

diversity initiatives as the landscape around DEI is rapidly changing, specifically in the Supreme Court.<sup>30</sup>

### III. IMPLICATIONS OF EXECUTIVE ORDER 14151

This change of current for DEI does not mean it has reached its final days as many companies have buckled down on their DEI programs amidst Trump's Executive Order.<sup>31</sup> Chief Executive of Uber, Dara Khosrowshahi, believes the integration of DEI is "just good business."<sup>32</sup> Many individuals and companies share the same belief that DEI programs are "essential to fostering a positive work culture . . . improv[ing] employee morale, promot[ing] business ethics, and driv[ing] creative problem-solving and innovation."<sup>33</sup> So, therefore, how does Trump's Executive Order impact companies who wish to keep their DEI programs intact?

The implication of Executive Order 14151 is explicitly targeted at the federal government.<sup>34</sup> Private companies may be impacted only if these companies have contracts with the government or DEI-based federal grants, in which case they would not continue to receive federal funding for DEI.<sup>35</sup>

Several plaintiffs joined to hail President Trump to court over the legality of his executive orders, alleging that provisions of Order 14151 violate the Fifth Amendment Due Process Clause, the First Amendment Free Speech Clause, the Spending Clause, and the Separation of Powers

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<sup>30</sup> Jessica Guynn, *McDonald's Flip in DEI Beef Serves Up Another Win for Conservative Critics*, USA TODAY, <https://www.usatoday.com/story/money/2025/01/06/mcdonalds-flips-in-dei-beef/77494643007/> (Jan. 8, 2025); Conor Murray & Molly Bohannon, *IBM Reportedly Walks Back Diversity Policies, Citing 'Inherent Tensions': Here Are All The Companies Rolling Back DEI Programs*, FORBES (Apr. 11, 2025), <https://www.forbes.com/sites/conormurray/2025/04/11/ibm-reportedly-walks-back-diversity-policies-citing-inherent-tensions-here-are-all-the-companies-rolling-back-dei-programs/>.

<sup>31</sup> See Miranda Jeyaretnam, *These U.S. Companies Are Not Ditching DEI Amid Trump's Crackdown*, TIME (Feb. 26, 2025), <https://time.com/7261857/us-companies-keep-dei-initiatives-list-trump-diversity-order-crackdown/>.

<sup>32</sup> *Id.*

<sup>33</sup> Michael Boyles, *DEI: What It Is & How to Champion It in the Workplace*, HARVARD BUS. SCH. (Oct. 3, 2023), <https://online.hbs.edu/blog/post/what-is-dei>.

<sup>34</sup> Exec. Order No. 14151, 90 FR 8339 (2025).

<sup>35</sup> *Id.*

Clause.<sup>36</sup> Plaintiffs contend the Executive Order was unconstitutionally vague, which would inhibit proper compliance with the Order, resulting in a risk for liability.<sup>37</sup> Plaintiffs allege the Executive Order exceeds the constitutional authority of the President as a violation of the Separation of Powers and Due Process clauses of the Constitution.<sup>38</sup> Additionally, one of the Plaintiffs' arguments includes how the execution of Executive Order would cause irreparable harm to the Plaintiffs and similarly situated federal contractors, grantees, and entities identified as targets for investigations and other compliance initiatives.<sup>39</sup>

United States District Judge, Adam B. Abelson, found the challenged provisions of Executive Order 14151 to be unconstitutionally vague, and plaintiffs were likely to succeed on their claims under the First Amendment and Fifth Amendment Due Process Clause.<sup>40</sup> The decision resulted in granting an injunction for two provisions of the executive order in full and one provision in part.<sup>41</sup> The enjoined parties may not use the Termination Provision to “pause, freeze, impede, block, cancel, or terminate any awards, contracts or obligations, or change the terms of any Current Obligation.”<sup>42</sup> The Certification Provision may not be enforced by the enjoined parties, which eliminates requirements for federal contractors and grantees to certify that they do not operate DEI programs.<sup>43</sup> Lastly, pursuant to the Enforcement Threat Provision, the enjoined parties may not bring DEI-related enforcement actions against private parties, government contractors, or government grantees.<sup>44</sup>

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<sup>36</sup> Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump, No. 1:25-cv-00333-ABA, 2025 WL 573764, at \*3 (D. Md. Feb. 21, 2025).

<sup>37</sup> *Id.* at \*2.

<sup>38</sup> *Id.* at \*3.

<sup>39</sup> *Id.* at \*28.

<sup>40</sup> *Id.* at \*1.

<sup>41</sup> *Id.* at \*2.

<sup>42</sup> *Nat'l Ass'n of Diversity Officers in Higher Educ.*, 2025 WL 573764, at \*31.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at \*32.

This is not the end of the road for Executive Order 14151 as the wait for the matter to be appealed begins. Importantly, the court's injunction expressly excludes the President and portions of the order that direct federal agencies to take internal action.<sup>45</sup> Even with the impending appeal, private companies who are neither in a contractual relationship with the federal government or receive federal funding are free to continue their DEI programs.<sup>46</sup>

#### IV. CONCLUSION

While political and economic pressures have led some to retreat from DEI commitments, the enduring advocacy from various leaders and organizations highlights the ongoing debate about the role and value of DEI. The current administration has made their stance on DEI abundantly clear by implementing several executive orders to disband such programs. Furthermore, public sentiment reflects this divide on DEI as Americans are becoming more vocal on which side of the fence they stand on. As DEI initiatives continue to face mounting criticism and rollback, its relevance and predominance in our society's future comes into serious question.

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<sup>45</sup> *Nat'l Ass'n of Diversity Officers in Higher Educ.*, 2025 WL 573764, at \*31.

<sup>46</sup> Exec. Order No. 14151, 90 FR 8339 (2025) (Although Executive Order 14151 aims to influence DEI in the private sector, the impact falls on companies who are in a contractual relationship with the federal government or receive federal funding because the government can dictate the scope of these relationships if companies do not comply with government regulations.) *Id.*