

Federal Policy Digest

February 13, 2026

Court of Appeals Allows Two Anti-DEI Executive Orders To Remain in Effect (2.6.26)

The U.S. Court of Appeals for the Fourth Circuit [vacated](#) (i.e., nullified) a preliminary injunction that had blocked key provisions of two executive orders aimed at curbing DEI-related activity in higher education and other federally funded contexts. Earlier, in February 2025, a federal district court [issued](#) a preliminary injunction against three provisions of the orders after higher education associations filed suit. In March 2025, the Fourth Circuit stayed (i.e., paused) that injunction pending appeal, allowing the provisions to be enforced while litigation continued. In this most recent decision, the Fourth Circuit formally vacated the preliminary injunction. The first executive order, Ending Radical and Wasteful Government DEI Programs and Preferencing, includes the “termination provision.” It directs federal agencies to terminate “equity-related” grants and contracts to the maximum extent permitted by law. The second executive order, Ending Illegal Discrimination and Restoring Merit-Based Aid, contains a “certification provision” and an “enforcement threat provision.” It directs federal agencies to require recipients of federal contracts or grants to certify that they do not operate programs promoting DEI that violate applicable federal anti-discrimination laws. It also directs agency heads to submit reports recommending strategies to curb DEI practices.

In reviewing the preliminary injunction, the Fourth Circuit held that the plaintiffs were unlikely to succeed on their claim that the termination provision is unconstitutionally vague under the Fifth Amendment’s Due Process Clause. While acknowledging some ambiguity in the order’s language, the court concluded that it was not so indefinite as to render it unconstitutional on its face. The court also stated that the president has authority to direct executive agencies to align funding priorities with administration policy priorities, subject to statutory constraints. The court further found that the plaintiffs were unlikely to succeed on their First Amendment claim, reasoning that the certification requirement compels recipients only to affirm compliance with existing federal anti-discrimination laws. Finally, the court determined that the plaintiffs lacked standing, at this stage, to challenge the enforcement threat provision.

Implications/next steps: Skye Perryman, president and CEO of Democracy Forward (which represents the plaintiffs), [emphasized](#) that the ruling concerns only the preliminary injunction and does not resolve the merits of the case, which will now return to the district court for further proceedings. The Fourth Circuit noted that affected entities may still challenge specific agency enforcement actions if they believe the administration misapplies federal anti-discrimination law. Nonetheless, vacating the preliminary injunction represents a legal victory for the Trump administration and allows the challenged provisions to remain in effect during ongoing litigation. Institutions that receive federal funding should continue [auditing](#) DEI-related programs and policies to assess potential legal risk, particularly where programs could be characterized by the administration as inconsistent with federal anti-discrimination requirements.

Education Department Warns Institutions Against Sharing Data with National Student Voting Study (2.5.26)

The Department of Education (ED) [sent](#) a [letter](#) to colleges and universities nationwide warning that sharing student data with the National Study of Learning, Voting, and Engagement (NSLVE) could risk violating federal law and could carry financial consequences if violations are found. In the letter, ED announced that it has opened an investigation into NSLVE. The Department [alleges](#) that researchers affiliated with the study may have improperly shared student data with political organizations, which, if true, could violate the Family Educational Rights and Privacy Act (FERPA), the federal law that protects the privacy of student education records. NSLVE describes itself as the nation's only large-scale, nonpartisan study of college student voting and registration. More than 1,000 colleges and universities have participated in the study to analyze and improve student civic engagement and voting rates. ED advised institutions that plan to use reports or data from this year's study "to wait to do so until the Department has completed its investigations." The ED did not provide a timeline for the investigation's conclusion. The letter states that potential enforcement actions could include withholding federal funds, issuing cease-and-desist orders, or recovering previously distributed funds.

Implications/next steps: Lynn Pasquerella, president of the American Association of Colleges and Universities, [noted](#) that this letter mirrors other attacks on higher education where the Trump administration has used threats of enforcement or funding loss to reshape institutional behavior, rather than through new legislation. Some conservative policymakers have argued that such voter engagement efforts disproportionately benefit Democratic candidates, though NSLVE has consistently characterized its work as nonpartisan. This move also comes as Trump has said he wants to "nationalize" elections.