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Judge Doubts Need For Discovery In Digital Equity Suit

By **Jared Foretek**

Law360 (June 11, 2026, 6:43 PM EDT) -- A Washington, D.C., federal judge struggled to find a reason for plaintiffs challenging the Trump administration's shutdown of the Digital Equity Act's Competitive Grant Program to get discovery in their lawsuit, suggesting the question of the program's constitutionality appeared to be a purely legal question, as the government suggested.

The U.S. Department of Commerce terminated the sole grant given out under the $1.25 billion program — to the National Digital Inclusion Alliance — last year, claiming the grant program's racial classifications were unconstitutional and touching off the NDIA's challenge. In its motion to dismiss, the government argues U.S. District Judge John D. Bates should simply rule the classification criteria unconstitutional under the U.S. Supreme Court's 2023 landmark affirmative action decision in Students for Fair Admissions v. Harvard.

At Thursday's motion hearing, Crowell & Moring LLP's Keith Harrison, representing the NDIA, insisted the pleading stage was too early to deem the Digital Equity Act, which was passed as part of the 2021 Infrastructure Investment and Jobs Act, to be unconstitutional.

"For this court, at the motion to dismiss stage, to declare this statute unconstitutional … would be to essentially throw first principles of Rule 12(b)(6) out," he said, referring to the Federal Rules of Civil Procedure provision governing dismissals for failure to state a claim. "No court has made the decision that the government is asking this court to … at the pleading stage."

But in question after question, Judge Bates pressed Harrison on what the parties and the court would get out of additional discovery or argument. The congressional record, the judge said, had already been reviewed — though Harrison insisted there would be more to learn from broader congressional inquiries into the "digital divide" predating the DEA's passage. And the administrative record related to the grant program's implementation and then termination, the judge said, wouldn't speak to whether its racial classifications passed constitutional muster under Students for Fair Admissions.

The Competitive Grant Program was designed to serve "covered populations" in an effort to expand broadband service in underserved communities. Among those populations — which also include veterans, the elderly, low-income and rural residents — were racial and ethnic minorities.

According to the NDIA, the fact that successful applications could target any of the other populations meant the grant program wasn't racially discriminatory at all.

"It's not a racial preference," Harrison said. "What Congress did here was make an attempt to bridge the digital divide. … It does not restrict members of any race from receiving the benefits."

But the administration argues any racial classification should be reviewed under strict scrutiny for a compelling government interest and narrowly tailoring. The U.S. Department of Justice says the Competitive Grant Program fails on both fronts.

On Thursday, Judge Bates said the plaintiffs had failed to give him a good reason to wait before ruling on the law's constitutionality.

"You haven't identified for me what further facts need to be developed and why they need to be developed. … So, I don't understand how waiting would be beneficial to resolve this issue," he said, at one point giving Harrison "one last crack" at the best case "for what the record could develop factually."

"I think it's the 17th way that I've asked the question," the judge said.

Judge Bates appeared to have left the hearing without a satisfactory answer, requesting additional briefing from the parties on why he should wait to address the constitutionality question.

Arguing for the government, Commerce Department attorney Patrick Butler said the judge had more than enough information to decide on the constitutionality.

"It's a pure legal question," he told the judge.

The government also complicated the NDIA's case Thursday by telling the judge that if he decided to sever the question of the racial classification's constitutionality from the broader grant program, the Commerce Department would restart it, just without that category.

"We will spend the money without considering race," Butler said.

Judge Bates said that was news to him, requesting further briefing from the government on the severability question. The NDIA has previously argued the Commerce Department could simply weigh the statute's "covered populations" unequally and all but ignore the racial minority category.

The National Digital Inclusion Alliance is represented by Edward G. Caspar, Leah Frazier, Gillian Cassell-Stiga and Marc P. Epstein of the Lawyers' Committee for Civil Rights Under Law, and Keith J. Harrison, Christian N. Curran, Alexandra Barbee-Garrett and Warrington Parker of Crowell & Moring LLP.

The government is represented by Winston Shi, Stephen M. Elliott and Brett A. Shumate of the U.S. Department of Justice, and Patrick L. Butler of the U.S. Department of Commerce.

The case is National Digital Inclusion Alliance v. Donald J. Trump et al., case number 1:25-cv-03606, in the U.S. District Court for the District of Columbia.

--Editing by Kristen Becker.
