

7th Circ. Grills Trump Admin Atty Over Definition Of Illegal DEI

By Celeste Bott

Law360 (January 30, 2026, 6:54 PM EST) -- Seventh Circuit judges on Friday pushed an attorney for the Trump administration to define what kind of diversity, equity and inclusion initiatives it deems illegal in requiring grant recipients to certify they don't promote DEI programs that violate anti-discrimination law, with one judge saying the unanswered question has caused "frustration" in litigation over the requirement.

The appellate court is considering whether to uphold or unwind a nationwide preliminary injunction blocking a mandate for federal grant recipients to certify that they don't operate programs that violate two of President Donald Trump's executive orders. The administration has deemed the ruling overbroad.

The orders in question include a requirement for federal agencies to include a certification in every contract or grant award that the recipient doesn't operate "any program promoting DEI that violates any applicable federal anti-discrimination laws. Chicago Women In Trades, a group that advocates for women's employment in skilled trades, sued the federal government last year alleging the orders chill its free speech.

During oral arguments in Chicago on Friday, U.S. Circuit Judge Ilana Rovner promptly asked a U.S. Department of Justice attorney to "shed light" that would allow entities like CWIT "to predict with some reliability what kind of DEI activities are still lawful."

"The reality of these [executive orders] are that programs that have been seen as combating historical discrimination were suddenly characterized as violating anti-discrimination laws, with no definition as to how and when DEI programs will fall on the illegal side of the analysis," Judge Rovner said. "The district court complained that the government emphasized that the certification provision implicates only illegal DEI programs, but according to the district court, neither in briefing nor oral arguments, did the government provide any definition to what is now considered illegal."

DOJ attorney Eric McArthur insisted there are DEI programs that are lawful, and pointed to a memorandum U.S. Attorney General Pamela Bondi put out in July.

"Why are you telling us this now, instead of in your brief?" U.S. Circuit Judge David Hamilton asked.

"We've consistently taken the position, Judge Hamilton, that there is nothing in the executive order or any of the documents that they have pointed to that takes the position that DEI is necessarily unlawful,"

McArthur replied, adding that was a "core error" that infects the case.

"That's not really an answer to my question. The district court asks the government repeatedly, Judge Rovner has been asking, the briefs have been asking, and now you're saying, as I believe for the first time, look at the [attorney general's] memo, that's not in the record, from July," Judge Hamilton said. "You understand the frustration from everybody dealing with this case on the court's side, has been the government's failure to answer that question, hence Judge Rovner's very polite request that you answer that question finally."

McArthur urged the court to look at terms of the relevant executive order itself.

"There's not a single word in the executive order that says all DEI is unlawful. In fact, if you look [at the section] that sets out the purpose, it talks about race and sex-based preferences that have been adopted under the guise of DEI that can violate the civil rights laws of this nation," he said.

"We need more than that to understand the argument," Judge Rovner said.

The order doesn't regulate "abstract advocacy for DEI," McArthur insisted.

U.S. Circuit Judge Michael Brennan then asked him to address CWIT's contention that the Trump administration's leveraging of federal funding envelops their speech.

"Their ultimate complaint here is they're concerned the government might adopt an interpretation of the federal anti-discrimination laws that they disagree with and that could potentially entrench on First Amendment speech. They are free to raise that defense if the government does bring an enforcement action," McArthur said.

"Conduct that violates the anti-discrimination laws, race-based discrimination, sex-based discrimination, that is not protected speech within the meaning of the First Amendment," he added. "The government is perfectly within its rights ... to say that if you want federal money, if you want to be a federal grantee, if you want to be a federal contractor, you have to comply with federal anti-discrimination law in all of your activities. Not just the ones we're funding, all of them."

Judge Hamilton then questioned if CWIT's focused efforts on training women for construction trades violates anti-discrimination law.

"I don't know. There's nothing in this record that speaks to what they do with sufficient granularity that would allow me to evaluate that. I'm not an expert in the anti-discrimination laws to begin with," McArthur said.

Judge Hamilton then remarked that the executive orders were "obviously issued as part of a 180-degree turn in federal anti-discrimination policy," and the administration "seem[s] to be asking us to ignore that context."

"The president is saying there seems to be this notion that has taken root in our country that if you are aiming to promote diversity, equity and inclusion, you can engage in forms of discrimination that would otherwise violate the anti-discrimination laws," McArthur said. "Simply because it's called DEI, simply because it's intended to promote diversity, does not give you license to have race or sex-based preferences that would violate anti-discrimination law."

If groups like CWIT, in good faith, certify that their activities comply with federal civil rights laws, "they have nothing to fear from this certification provision," he added.

Warrington Parker of Crowell & Moring LLP, an attorney for CWIT, highlighted the emphasis in the certification prohibiting programs that "promote" DEI.

"That is a term for speech," he said.

The government's interest here is not to actually enforce anti-discrimination laws, Parker argued.

"The only thing you have to certify is that you do not promote programs that are DEI. That's it. If the government were truly interested, that second paragraph would read, you have to certify you don't violate all anti-discrimination laws of the United States," he said.

Judge Rovner then suggested it was not a viewpoint-neutral provision.

"What you have here is only programs promoting DEI are problematic, not those opposing it. On top of that, it extends to the conduct of programs that are not themselves federal funding," she said. "So isn't it improperly attempted to restrict speech outside of the federally funded programs?"

"I wish you had let me make those arguments, but I'm going to agree with you wholeheartedly," Parker said. "It is viewpoint discriminatory. Because you can run any program you want that is anti-DEI, it can even violate the anti-discrimination laws of the United States, and you don't have to certify a thing."

Judge Hamilton questioned if the alleged problem could be solved with more detailed guidance of what is and isn't illegal, but Parker pushed back on that, saying the Trump administration has made clear that all policies, programs and activities that promote DEI are "presumptively illegal."

"How much does this certification provision actually matter?" the judge then asked. "We have a huge fight over it, but with or without the certification, the government can still bring enforcement actions under federal anti-discrimination laws."

Parker said the orders as they stand open up entities like CWIT to False Claims Act challenges that impose civil damages, which could end up as a criminal case.

"Everyone has to adhere to anti-discrimination laws. The government's interest is not compliance with anti-discrimination laws or there would not be a carveout for promoting programs in DEI," he said.

An Illinois federal judge blocked the certification in May, and maintained that while the U.S. Supreme Court has recently cautioned against issuing injunctions that cover nonparties, blocking the requirement for all recipients of U.S. Department of Labor funds was necessary to afford CWIT complete relief.

In October, he refused to stay the injunction while this appeal plays out in the Seventh Circuit.

U.S. Circuit Judges Michael Brennan, Ilana Rovner and David Hamilton sat on the panel for the Seventh Circuit.

The Trump administration is represented by Eric McArthur, Gabriel Schonfeld, Jennifer Utrecht and

Daniel Tenny of the U.S. Department of Justice.

Chicago Women in Trades is represented by Jason P. Stiehl, Anuj Vohra, Keith J. Harrison, Meshach Y. Rhoades and Warrington Parker of Crowell & Moring LLP, Elizabeth E. Theran and Adrienne DerVartanian of the National Women's Law Center, Sabrina A. Talukder, Kathryn J. Youker, Adria J. Bonillas, Olivia Sedwick and Gillian Cassell-Stiga of the Lawyers' Committee for Civil Rights Under Law, Aneel L. Chablani and Ami D. Gandhi of the Chicago Lawyers' Committee for Civil Rights, and Lourdes M. Rosado and Rafaela Uribe of LatinoJustice PRLDEF.

The case is Chicago Women in Trades v. Trump et al., case number 25-2144, in the U.S. Court of Appeals for the Seventh Circuit.

--Editing by Michael Watanabe.

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