

DOJ Sues Minnesota Over Affirmative Action, Certifies Case for Early SCOTUS Fight on Title VII Precedent

by Nicole Engisch, Matthew Gillespie, Alex Hontos, and Melissa Raphan

On January 14, 2026, the United States Department of Justice's ("DOJ") Civil Rights Division filed a federal suit seeking to strike down the State of Minnesota's affirmative-action program in a challenge that could have sweeping consequences for public and private employers throughout the United States. DOJ's action, brought under Title VII of the Civil Rights Act of 1964 ("Title VII"), signals a continuation and escalation of the second Trump administration's anti-DEI agenda.

What is DOJ alleging?

DOJ alleges the State of Minnesota ("Minnesota") "engages in a pattern or practice of resistance to the full enjoyment of rights secured by Title VII" in implementing its statutorily mandated affirmative-action program for hiring state workers. Under Minnesota law, Minnesota is required to implement an affirmative-action program for hiring across state agencies with the stated goal of "eliminat[ing] the effects of past and present discrimination."¹ Specifically, Minnesota's affirmative-action program is designed to "eliminate underutilization of qualified protected group members within the state civil service . . ."² "Qualified Protected Groups" include women, people with disabilities, and members of the following minority groups: "Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan native."³ To do this, state agencies must look to labor force statistics to identify underutilization of protected groups.⁴ If an agency identifies underutilization for any role, it must establish hiring goals from those protected groups and identify a timetable for achieving those goals.⁵ Failure to achieve the goals requires the agency to justify the non-protected group hires.⁶

DOJ claims two violations under sections 703(a)(1) and (a)(2) of Title VII: that Minnesota (1) fails or refuses to hire or discharge an employee based on race, color, religion, sex, or national origin; and (2) limits, segregates, or classifies employees in a way that disadvantages them based on race, color, religion, sex, or national origin.⁷ DOJ characterized Minnesota's staffing decisions as a "zero-sum game" such that giving preference to certain candidates based on protected class status disadvantages other

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candidates based on those same characteristics. DOJ also alleges Minnesota engages in a “pattern or practice” of discrimination by requiring agencies to justify hires from outside of the protected groups hires when statutorily mandated goals are not met. DOJ further alleges Minnesota’s identification and classification of certain underutilized protected groups (e.g., persons of color and women) adversely impacts those who fall outside of those underutilized protected groups.

DOJ is seeking both declaratory and injunctive relief against Minnesota.

What is the law on affirmative-action programs today?

For nearly half a century, the Supreme Court has sanctioned certain affirmative-action programs in employment. In *United Steelworkers of America v. Weber*,⁸ the Supreme Court rejected arguments that Title VII “prohibits all race-conscious affirmative-action plans,”⁹ holding “we cannot agree . . . that Congress intended to prohibit the private sector from taking effective steps to accomplish the goals that Congress designed Title VII to achieve.”¹⁰ The Court reasoned that “[i]t would be ironic indeed if a law triggered by a Nation’s concern over centuries of racial injustice . . . constituted the first legislative prohibition of all voluntary, private, race-conscious efforts to abolish traditional patterns of racial segregation and hierarchy.”¹¹

Eight years later, the Supreme Court extended this logic to public employers. In *Johnson v. Transportation Agency, Santa Clara County, California*,¹² the Court considered a challenge to an affirmative-action plan that permitted a public agency to consider a qualified applicant’s sex for traditionally segregated job classifications in which women were significantly underrepresented.¹³ The Court held that the County’s affirmative-action plan was in line with the requirements of Title VII, enshrining public employers’ rights to implement affirmative-action plans to remedy traditional underrepresentation.

In its Complaint, DOJ cites the Supreme Court’s recent decision in *Students for Fair Admissions v. President & Fellows of Harvard College* (“SFFA”),¹⁴ in which the Court determined race-conscious admissions in higher education violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act. While not a decision under Title VII, SFFA is often cited by the government and others as a recent indicator of the Supreme Court’s hostility to consideration of race in similar programs, regardless of remedial effect or intent. In the DOJ’s press release accompanying its Complaint, DOJ asserted: “While the U.S. Supreme Court previously sanctioned the consideration of race and sex in hiring for ‘traditionally segregated job categories,’ the United States argues such outdated precedents are inconsistent with both the text of Title VII and subsequent Supreme Court caselaw.” In other words, DOJ recognizes that its Complaint is contrary to long-standing Supreme Court precedent, but it is seeking to overturn that precedent in its suit.

What does it mean that the Attorney General certified the case as one of “general public importance”?

Title VII permits the Attorney General of the United States to request appointment of a

three-judge panel to decide disputes certified by the Attorney General as being of “general public importance.”¹⁵ While the statutory requirement of a three-judge panel provides additional judicial involvement at the trial stage, perhaps the most significant implication of the suit’s designation is that any appeal from final judgment may be made directly to the Supreme Court. This, coupled with the statutory mandate that Title VII actions “be in every way expedited,” suggests this challenge could reach—and be decided by—the Supreme Court much faster than most suits.

In the past year, the second Trump administration has issued several executive orders addressing what it refers to as illegal DEI, including Executive Order 14173 (“Ending Illegal Discrimination and Restoring Merit-Based Opportunity”), which directed the Attorney General to provide the White House with recommendations “for enforcing Federal civil-rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI.” In that and other guidance and federal government directives, the exact meaning of “illegal DEI” has not been clarified, leaving employers nationwide to navigate a shifting and obscure federal landscape.

What would a DOJ verdict mean for my organization?

If DOJ’s challenge is successful, it likely means the end of affirmative-action programs nationwide. DOJ seeks a declaratory judgment that Minnesota’s affirmative-action program, which is consistent with or similar to affirmative-action plans implemented by public and private employers across the country, violates Title VII. To reach this result, either the District of Minnesota’s three-judge panel or, more likely, the Supreme Court would need to overturn its nearly 50-year-old precedent in *United Steelworkers* to interpret Title VII to prohibit remedial affirmative-action programs.

A decision of this magnitude could require employers throughout the country to move quickly to disassemble affirmative-action programs and to change hiring policies and practices to comply with any new Supreme Court directives. Such a ruling could open state laws that require agencies, contractors, or others to develop and implement affirmative-action programs, to arguments that they are preempted by federal law. Moreover, employers could find themselves subject to increased litigation from individuals challenging current programs by filing Equal Employment Opportunity Commission discrimination charges relying on any decision striking down Minnesota’s program.

Federal fund recipients would be particularly impacted by a ruling in favor of DOJ. Federal fund recipients (including contractors, subcontractors, and grant recipients) are frequently required to agree to or certify to their compliance with federal civil rights laws. A decision finding affirmative-action programs in employment violate Title VII would upend nearly half a century of accepted employment practices, and federal funding could be at stake.

What would a defense verdict mean for my organization?

If Minnesota successfully defends against DOJ's challenge through an appeal to the Supreme Court, the immediate result could be an endorsement of the permissibility of affirmative-action programs that otherwise complied with existing Supreme Court precedent. While much depends on the specifics of any ruling, such a decision could also undermine the theories underpinning DOJ's positions on DEI and related practices. Absent a conclusive endorsement of established caselaw supporting affirmative-action programs, however, public and private employers may still find themselves having to navigate conflicting obligations and interpretations of law between federal and state authorities.

How should my organization prepare?

Because of the Attorney General's certification and the expedited nature of Title VII challenges, it is unlikely that DOJ's challenge will languish in court for years on end. While the suit is in its nascent stages and it seems unlikely that a three-judge panel will take it upon itself to overturn longstanding Supreme Court precedent, public and private employers alike may want to begin contingency planning for the possibility that the Supreme Court will declare Minnesota's affirmative-action program unlawful. If that happens, it is likely that other affirmative-action programs will be challenged in the courts, and an aggressive federal government could seek to leverage a favorable ruling to expand anti-DEI enforcement actions.

¹ Minn. Stat. 43A.19, subd. 1(a).

² Minn. R. 3905.0100.

³ Minn. Stat. 43A.02, subd. 33.

⁴ Minn. R. 3905.0600.

⁵ Minn. R. 3906.0600.

⁶ Minn. Stat. 43A.191, subd. 3(c).

⁷ 42 U.S.C. § 2000e-2(a)(1), (2).

⁸ 443 U.S. 193, 254-55 (1979).

⁹ *Id.* at 201.

¹⁰ *Id.* at 204.

¹¹ *Id.*

¹² 480 U.S. 616, 632-42 (1987).

¹³ *Id.* at 620-21.

¹⁴ 600 U.S. 181 (2023).

¹⁵ 42 U.S.C. § 2000e-6(b).