

Policy Shifts and Legal Battles:

The Trump Administration's Impact on Local Government

Thursday, October 9, 2025

Brownstein



Introduction

- President Trump's executive actions (EOs) during his second term touch nearly every corner of government:

•Energy and Environment	• Labor
•Education	•National Security and Defense
•Financial Services	•Social Issues
•Government Administration	•Tax
•Health Care	•Technology & Telecommunications
•Housing	•Transportation and Infrastructure
•Immigration	•Trade
•International Affairs	

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- **Brownstein maintains a tracker of the EOs issued by President Trump:**
<https://www.bhfs.com/insight/tracking-president-trump-s-executive-orders/>

Today's Discussion

Focuses on three categories of executive action that have **direct impacts on cities, states, and federally funded programs**:

1. Impacts to Designated 'Sanctuary' Jurisdictions
2. Federal Funding
3. DEI Programs

Executive Orders: Legal Limits and Considerations

- **EOs are powerful tools** for setting executive policy and shaping agency priorities
- **“Take Care” Clause:** EOs are instruments through which the President can exercise their obligation under the U.S. Constitution to “take care that the laws be faithfully executed” (U.S. Const. art. II, § 3)
- **EOs are NOT** a substitute for the legislative or regulatory process
- **Legal effect of EOs** limited to what is permissible under the Constitution and federal law

EXAMPLES:

- **Proper use of EOs:** directing agencies to initiate a rulemaking process
- **Potentially improper uses of EOs:** declaring federal regulations or regulatory definitions void; creating new regulatory definitions or new policies outside of the rulemaking process

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Impacts to Designated 'Sanctuary' Jurisdictions

EOs Impacting ‘Sanctuary’ Jurisdictions

The following EOs have led to an increase in immigration enforcement and implications for designated “sanctuary” jurisdictions:

- ***Protecting the American People Against Invasion*** (EO 14159, [90 FR 8443](#))
 - “The Attorney General and Secretary of Homeland Security shall, to the maximum extent possible under law, evaluate and undertake any lawful actions to ensure that so-called ‘sanctuary’ jurisdictions, which seek to interfere with the lawful exercise of Federal law enforcement operations, do not receive access to Federal funds.”
- ***Protecting the Meaning and Value of American Citizenship*** (EO 14160, [90 FR 8449](#))
- ***Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats*** (EO 14161, [90 FR 8451](#))
- ***National Emergency Concerning the Southern Border of the United States*** (Proclamation 9844, [90 FR 8327](#))
- ***Securing Our Borders*** (EO 14165, [90 FR 8467](#))
- ***Ending Taxpayer Subsidization of Open Borders*** (EO 14218)
- ***Protecting American Communities From Criminal Aliens*** (EO 14287, [90 FR 18761](#))
 - Directed the Department of Justice to publish a list of ‘sanctuary’ jurisdictions

Other Executive Actions Impacting 'Sanctuary' Jurisdictions

- **Sanctuary City AG Memo:** U.S. Attorney General Bondi issued a memo on February 5 stating that sanctuary jurisdictions should not receive access to federal grants administered by the Department of Justice
- **Trump administration sued** Illinois, the City of Chicago, and Cook County on February 6 for allegedly thwarting federal efforts to enforce immigration laws
 - The lawsuit sought to invalidate state and local laws but was dismissed on July 25 for lack of standing
- **Trump administration sued** the City of New York, Mayor Eric Adams, and top law enforcement on July 24 alleging its sanctuary city policies are preempted by federal law
 - Lawsuit still pending
- These executive actions and lawsuits largely rely on the legal argument that the **Supremacy Clause** of the U.S. Constitution enables the federal government to invalidate any state and local law it deems as interfering with federal law

Lawsuits Challenging the Executive Actions

- **City and County of San Francisco, et al., v. Donald J. Trump, et al.**, U.S. District Court for the Northern District of California, Case No. 25-cv-01350
 - Challenging EO 14159, EO 14218, and the Sanctuary City Memo and related funding freezes
- **Cities of Chelsea and Somerville v. Donald J. Trump, et al.**, U.S. District Court for the District of Massachusetts, Case No. 25-cv-10442
 - Challenging EO 14159, EO 14218, and the Sanctuary City Memo and related funding freezes
- **State of Illinois, et al., v. FEMA, et al. (D.R.I 2025) – F.Supp. 3d --**
 - Successfully challenged the Trump administration's attempts to withhold nearly \$2 billion in disaster relief funds from states with sanctuary cities
- **Vasquez Perdomo v. Noem (9th Cir. 2025) 148 F.4th 656**
 - Class action against federal immigration officials alleging officers had a policy of detaining individuals without reasonable suspicion that the person was in the U.S. in violation of federal immigration law

Implications for Jurisdictions in California

- The criteria for identifying whether a jurisdiction qualifies as a ‘sanctuary’ jurisdiction is unclear but pursuant to EO 14287 the Trump administration published a list of states, cities, and counties it identified as ‘sanctuary’ jurisdictions:
 - California
 - San Diego County, CA
 - San Francisco County, CA
 - Berkeley, CA
 - Los Angeles, CA
 - San Francisco City, CA
- **Case-by-case approach** to designating jurisdictions
- Even if a city or county in California is not identified as a ‘sanctuary’ jurisdiction, it **may still be affected by the state’s sanctuary status**

Local Law Enforcement & Deportation Efforts

California Values Act (SB 54) limits state and local law enforcement cooperation with federal immigration enforcement

Circumstances when local law enforcement may assist ICE:

- Local law enforcement may notify ICE of an individual's release or transfer of **custody if the person has been convicted of a serious or violent felony** (e.g., murder, rape, robbery)
 - Localities may participate in federal task forces involving criminal investigations, as long as the primary focus is not immigration enforcement (e.g., drug trafficking or human trafficking)
 - Jails may comply with an ICE request if ICE obtains a judicial warrant—administrative detainers (ICE holds) are not enough
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- If local law enforcement assists in activities prohibited by the California Values Act, the state could administer penalties

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Impacts on Federal Funding

Federal Spending Overview

- Three general buckets of federal funding:
 - (1) non-obligated funds
 - (2) obligated funds (promised but not disbursed)
 - (3) disburse funds (outlays) → difficult to rescind or 'claw back' disbursed funds
- Obligated funds may be terminated in four instances:
 - (1) failure to comply
 - (2) mutual agreement
 - (3) recipient request
 - (4) if the award no longer meets the program goals or agency priorities
- Congressional Budget and Impoundment Control Act of 1974 (ICA) provides the president with two options to halt congressionally appropriated funds:
 - (1) deferral (withhold funds temporarily)
 - (2) rescission (propose cancellation of funds and Congress must approve the request within 45 days)

Executive Actions Impacting Federal Funding

- **OMB Memo:** On January 27, the Office of Management and Budget (OMB) released a memo (*now rescinded*) purporting to temporarily pause federal funding directly impacted by the following EOs:
 - *Protecting the American People Against Invasion* (EO 14159, [90 FR 8443](#))
 - *Reevaluating and Realigning United States Foreign Aid* (EO 14169, [90 FR 8619](#))
 - *Putting America First in International Environmental Agreements* (EO 14162, [90 FR 8455](#));
 - *Unleashing American Energy* (EO 14154, [90 FR 8353](#))
 - *Ending Radical and Wasteful Government DEI Programs and Preferencing* (EO 14151, [90 FR 8339](#))
 - *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* (EO 14168, [90 FR 8615](#))
 - *Enforcing the Hyde Amendment* (EO 14182, [90 FR 8751](#))
- Many of these EOs have been challenged in court ***but they currently remain in effect***
- Even though the OMB Memo was rescinded, federal funding remains at risk because some of these EOs include their own internal freezes on federal funding

Lawsuits Challenging the Executive Actions

- **National Council of Nonprofits, et al., v. Office of Management and Budget, et al.,** U.S. District Court for the District of Columbia, Case No. 25-cv-00239
 - Challenging the OMB Memo and EOs that called for a categorical freeze of appropriated and obligated funds while federal agencies review funding alignment with Trump's policy priorities
- **State of New York, et al., v. Donald Trump, et al.,** U.S. District Court for the District of Rhode Island, Case No. 25-cv-00039
 - Challenging the OMB Memo and EOs that called for a categorical freeze of appropriated and obligated funds while federal agencies review funding alignment with Trump's policy priorities

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Impacts on DEI Efforts

Executive Actions Impacting DEI Efforts

- ***Reforming the Federal Hiring Process and Restoring Merit to Government Service*** (EO 14170, [90 FR 8621](#))
 - Targets federal policies, officers, and positions designed to promote DEI, environmental justice, and other social justice related causes
- ***Ending Illegal Discrimination and Restoring Merit-Based Opportunity*** (EO 14173)
 - Rescinded EO 11246 (Equal Employment Opportunity), which established anti-discrimination requirements for federal contractors and subcontractors
- ***Ending Radical and Wasteful Government DEI Programs and Preferencing*** (EO 14151, [90 FR 8339](#))
 - Classifies DEI programs as unlawful under federal law (but fails to specifically describe the type of programs the administration views as 'unlawful')
 - Requires federal grantees, as a condition of accepting federal money, to not violate any law (including that classification of DEI programs as unlawful)
 - Relies on existing anti-discrimination and civil rights law
 - There are currently **12 active cases challenging EO 14151** that have **temporarily blocked enforcement of parts of the EO**

Implications of Executive Order 14151

- **EO 14151** requires every future contract or grant award issued by the federal government to include:
 - (1) “A term requiring the contractual counterparty or grant recipient to **agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material** to the government’s payment decisions for purposes of [the False Claims Act]”
 - (2) “A term requiring such counterparty or recipient to **certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws**”
- If an entity promotes DEI within their organization (e.g., strategic committee or mentorship program), they would likely not be able to certify that they comply with the terms of the contract and would be ineligible for funding
- The required terms create a heightened risk of liability under the False Claims Act (31 U.S.C. §§ 3729 – 3733)
- The impact of the order on granted or obligated funds is less clear because such funding is very difficult to ‘claw back’
- The funding freezes included in the DEI related EOs are currently enjoined by preliminary injunctions and so the status depends on whether the federal administration complies with the injunctions

Conclusions

- Until further guidance and clarity from the White House, entities can:
 - (1) **be on the lookout for more guidance from implementing agencies.** Federal contractors should expect updates from the OFCCP regarding compliance with the EOs as compliance deadlines approach
 - (2) **internally determine if any of its programs or policies ‘promote’ ‘DEI’.** Even if the program in question is not federally funded, the fact that an entity itself funds or participates in the program may be enough to cut the entity off entirely from receiving federal grants or awards in the future. Entities should be aware of this risk when continuing to implement and promote DEI programs
 - (3) **closely monitor the evolving status of the legal challenges to Executive Order 14151 and Executive Order 14173.** Many of these cases are proceeding on expedited briefing schedules, with ongoing motion practice and active court involvement. The outcomes of these cases will determine whether key provisions of the executive orders are upheld, narrowed, or invalidated

Additional Resources

- Trump Executive Action Trackers:
 - <https://www.bhfs.com/trump-executive-action-tracker/>
 - https://docs.google.com/spreadsheets/d/1ON3UJFin3q_TlvsOxhWgu-KU3vAXvdrDqpKW6lw1aCE/edit?gid=0#gid=0
- Bondi: DOJ Will Investigate Private-Sector DEI | 02.07.25 - <https://www.bhfs.com/insight/bondi-doj-will-investigate-private-sector-dei/>
- White House Advances Deregulatory Agenda | 04.18.25 - <https://www.bhfs.com/insight/white-house-advances-deregulatory-agenda/>
- Trump EOs and Implications for Cities and Public Agencies | 05.05.25 - <https://www.bhfs.com/insight/trump-executive-orders-and-implications-for-cities-and-public-agencies/>
- DOJ's Civil Division Announces New Enforcement Priorities—What It Means for Business | 07.07.25 - <https://www.bhfs.com/insight/dojs-civil-division-announces-new-enforcement-priorities-what-it-means-for-business/>
- President Trump Establishes Process for Implementing Trade Agreements | 09.16.25 - <https://www.bhfs.com/insight/president-trump-establishes-process-for-implementing-trade-agreements-implements-u-s-japan-deal/>

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Thank you!

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