

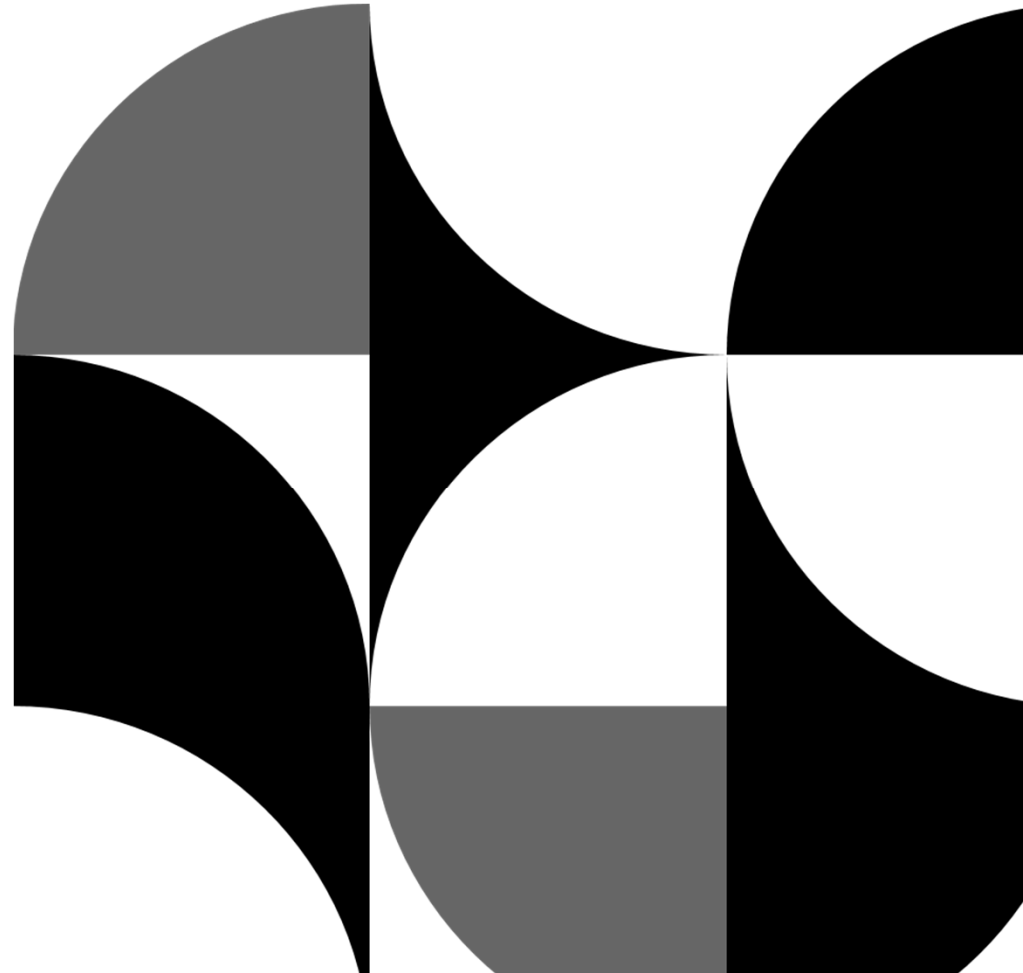


# Developments and Strategies in the Current Landscape of DEI Programs

June 20, 2024

**Seyfarth Shaw LLP**

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# Agenda

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<b>01</b>	Current Program Overview
<b>02</b>	Impact of SCOTUS <i>Muldrow</i> decision; New <i>Fearless Funds</i> 11 <sup>th</sup> Circuit decision
<b>03</b>	Balancing Risks
<b>04</b>	Program Risks Assessments and Best Practices

# Muldrow v. City of St. Louis (April 17, 2024)

Issue: Whether a plaintiff needs to establish an employer's adverse actions resulted in substantial harm

Holding: Title VII requires only "some harm" to exist

Impact for employers:

- Should review changes to employees' terms and conditions of employment, including internal transfers, change to worksite reporting, etc.
- may lead to DEI opponents to challenge employers' efforts to advance DEI

***American  
Alliance for  
Equal Rights v.  
Fearless Fund  
(June 3, 2024)***

Issue: Appeal from denial of preliminary injunction, challenging under 42 U.S.C. §1981 a venture capital fund's entrepreneurship competition open only to businesses owned by black women.

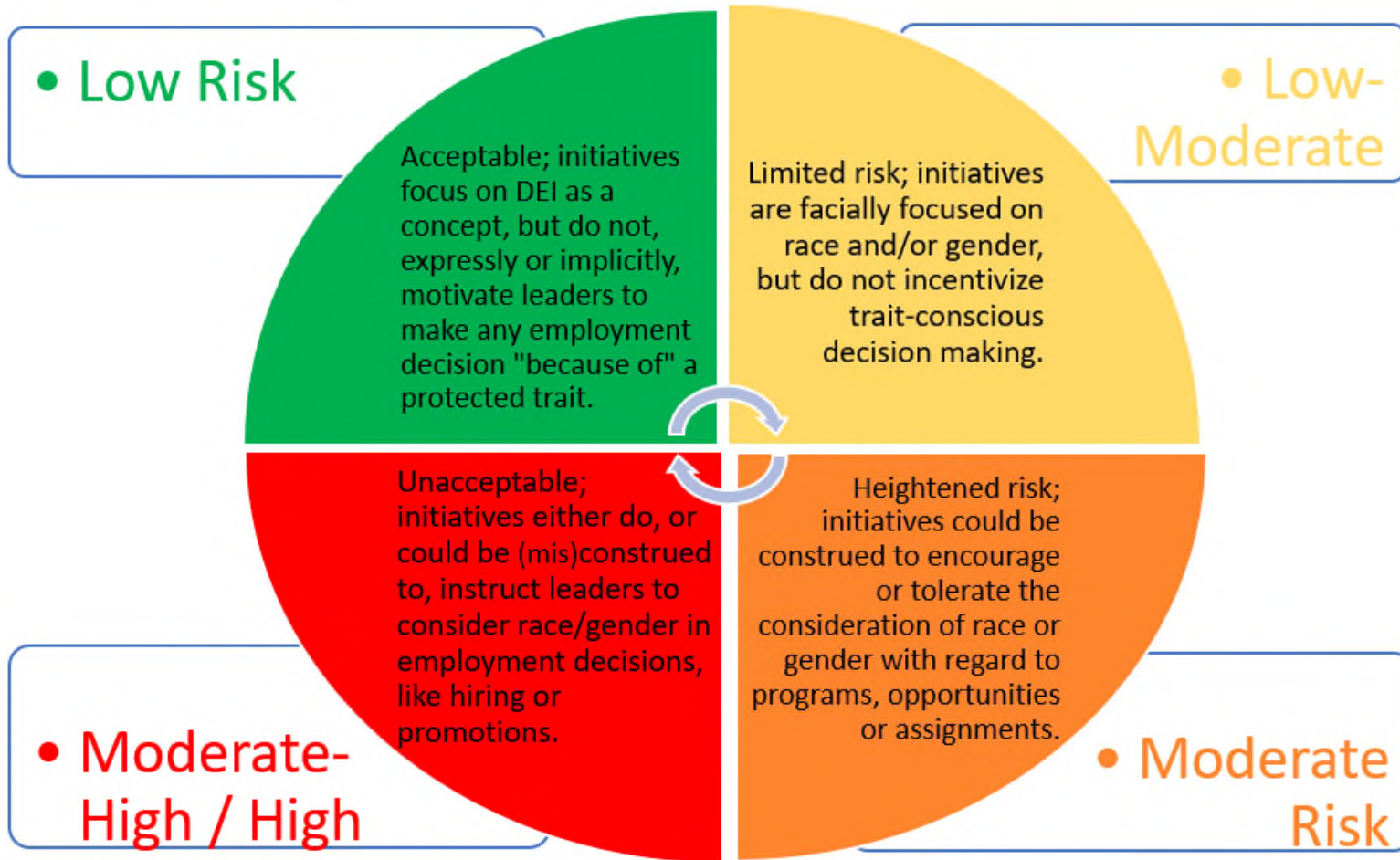
Holding: Reverses district court and preliminary enjoins the Fund's program, holding that the Alliance has standing to sue, and contest likely to violate §1981. Court rejects Fund's 1<sup>st</sup> Amendment defense.

Impact for employers:

- Though not an employment case, Edward Blum strikes again: private employers on notice;
- Caution needed with respect to opportunities or programs that are exclusive to certain demographics

# Balancing Risks







## Low Risk



- Analytics
  - Pay Equity
  - Anti-Harassment and Anti-Discrimination Training
  - ***Implicit Bias Training***
  - Inclusive Leadership Training
  - Inclusive Job Postings and Descriptions
  - Targeted Job Postings
  - Partnership and Collaboration
-

## Acceptable Risk



- DEI Workforce Aspirational Goals
  - Employee Resource Groups
  - Leveraging ERGS for Employee Referral Programs
  - **Scholarship Programs**
  - Pipeline Programs
  - **Cultural Competency Workshops**
  - Affinity Days and Events
  - Employee Surveys and Feedback
  - Community Engagement and Social Responsibility
  - Equity Audits and Assessments
  - Accessibility Initiatives
  - Diversity Recruitment Initiatives
-

## Heightened Risk



- ! Rigid or Precise DEI “Aspirational” Goals
  - ! Diverse Slate Requirements
  - ! Mentorship and Sponsorship Programs
  - ! Internship Programs
  - ! Supplier Diversity Programs
  - ! Leadership Development Initiatives
  - ! Tying compensation to DEI Hiring or Promotional Goals
-

## Unacceptable Risk



- X Quotas or Numerical Goals Based on Race or Gender
  - X Making Race or Gender Conscious Employment Decisions
  - X Exclusion of Certain Groups
  - X Racial or Gender Stereotyping
  - X Selective Training or Development Programs
  - X Stereotyping in Hiring or Promotion Decisions
  - X Ignoring Merit-Based Criteria
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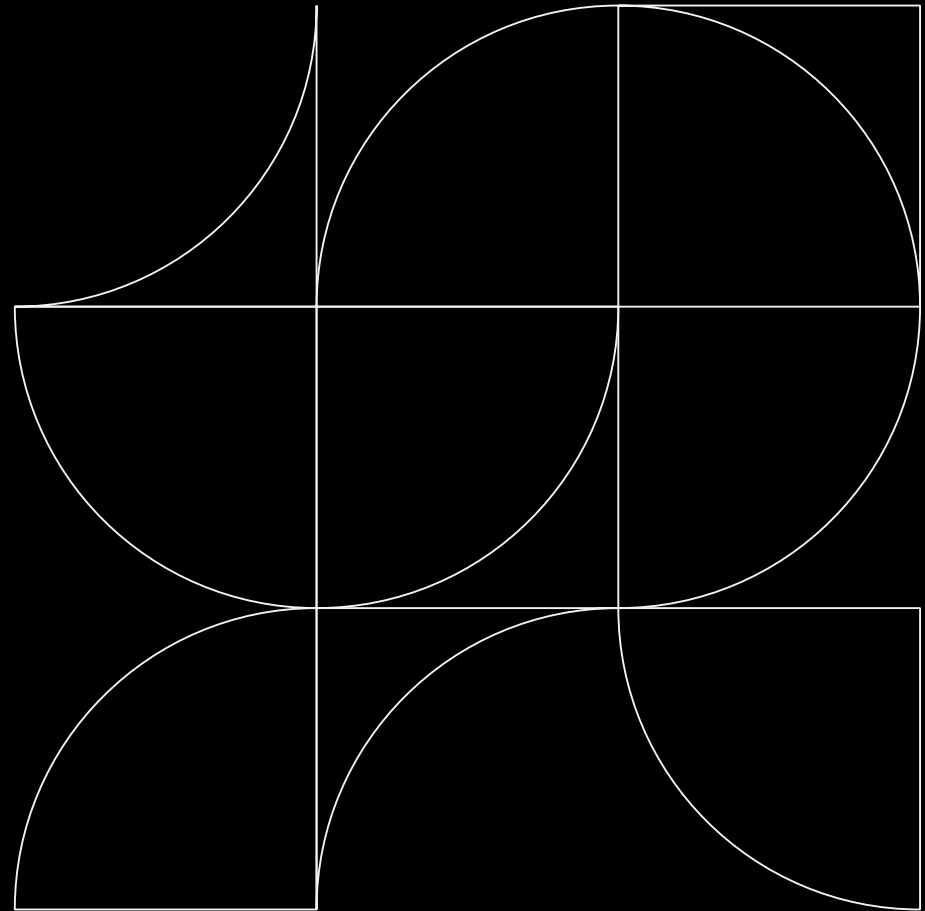
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**Questions?**



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