



Written by [David Kelly](#) on September 27, 2023

Judge Refuses to Block DEI Venture Capital Program

A U.S. district judge [denied](#) a request on Tuesday for a preliminary injunction sought by Edward Blum, a successful anti-affirmative action activist, to bar a venture capital fund from considering applications and awarding grants to businesses run by black women.

Blum's American Alliance for Equal Rights (AAER) filed a [lawsuit](#) in August challenging grant and fellowship programs offered by [Fearless Fund](#), a venture capital group that helps give black, Hispanic, and other minority groups better career opportunities.



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According to [Reuters](#), the lawsuit claimed the defendants violated "Section 1981 of the 1866 Civil Rights Act, a law enacted after the Civil War that guarantees all people the same right to make and enforce contracts 'as is enjoyed by white citizens.'"

Reuters continued:

While the law was adopted with formerly enslaved Black people in mind, courts have interpreted it for decades as protecting white people from racial discrimination as well. Blum's group relies upon those rulings in seeking a corporate sequel to the [June decision](#), powered by the Supreme Court's 6-3 conservative majority, in favor of another group he founded declaring race-conscious student admissions policies used by Harvard University and the University of North Carolina unlawful.

Judge Thomas Thrash disagreed with Blum's request to block the grant program, ruling that Fearless Fund could continue to offer their programs, according to [Atlanta News First](#) (ANF), and stating that "a lawsuit arguing it illegally excluded other races was not likely to succeed." Thrash will issue a written order by the end of the week.

Reuters [shared](#) that "with a Saturday deadline approaching for this year's grant applications, Blum's organization quickly filed an [emergency appeal](#) asking the Atlanta-based 11th U.S. Circuit Court of Appeals to prevent Fearless Fund from picking a grant winner. It said Thrash's decision rested on a single ground: That Fearless' charitable grant program was a form of speech protected by the U.S. Constitution's First Amendment, a holding that Blum's group said 'would obliterate nondiscrimination law.'"

Fearless Fund's attorneys released the following statement after the ruling, as [reported](#) by ANF:

Today, the fight for equity and real economic freedom prevailed. The Federal District Court denied plaintiff's attempt to shut down a charitable organization's mission to support Black women and women of color. We outlined in clear and precise terms why plaintiff's claims against the Fearless Foundation are baseless. The reality is that Black women and women of



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color are significantly under-resourced in advancing their business endeavors. There is no law that restricts grants from being issued to women of color or Black women, particularly in light of this disparity. We are pleased with this result.

Even with this week's ruling against Blum, venture capitalist organizations are watching this case quite closely. TechCrunch+ [reported](#) that if AAER wins this lawsuit, "it could result in the first official piece of law around diversity, equity and inclusion in venture capital. The result could very well set a lasting precedent for how the entire startup ecosystem evolves."

Blum's post-ruling statement, as [reported](#) by ANF, details that the lawsuit is far from over:

... Our nation's civil rights laws do not permit racial distinctions because some racial groups are over-represented in various endeavors, while others are under-represented.

A useful way of determining the fairness, and, ultimately, the legality, of a policy is to apply the "shoe on the other foot" test. In the case of the Fearless Fund, would a different venture capital fund's requirement that only white men are eligible for its funding and support be fair and legal? If the answer is no, then it must follow in the law that racially exclusive policies that target a different race and sex must be unfair and illegal as well.

The vast majority of venture capital funding today is directed to very specific businesses such as artificial intelligence, software models, biopharmaceuticals, renewable energy, medical devices, and other high-technology businesses. These businesses have potentially enormous financial scale while many others do not. The principals of these high-tech companies usually have advanced degrees and experience in academic fields such as physics, computer science, biomedical engineering, chemistry, and mathematics.

The venture capital funding gaps between the races is never a legal or moral justification to exclude certain men and women from public programs by race or ethnicity.

The American Alliance for Equal Rights believes it is legally permissible to provide benefits to businesses and individuals who are under-resourced, but those benefits must be made available to all races and ethnicities....

Judge Thrash's denial of the preliminary injunction is only the first step in a court case that could very well change — if not end — future diversity programs as they are now. Knowing Blum's recent court successes, you can count on this case potentially ending up in the U.S. Supreme Court.



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