EDITION Nº FORTY-FIVE

NEWS WITH PURPOSE, DECISIONS THAT COUNT

STATE OF THE UNION

THE JOHNSON + KROL NEWSPAPER

SUPREME COURT TO DECIDE KEY ERISA ISSUE IN WITHDRAWAL LIABILITY CASE

Ruling will clarify which actuarial assumptions apply in withdrawal liability calculations.

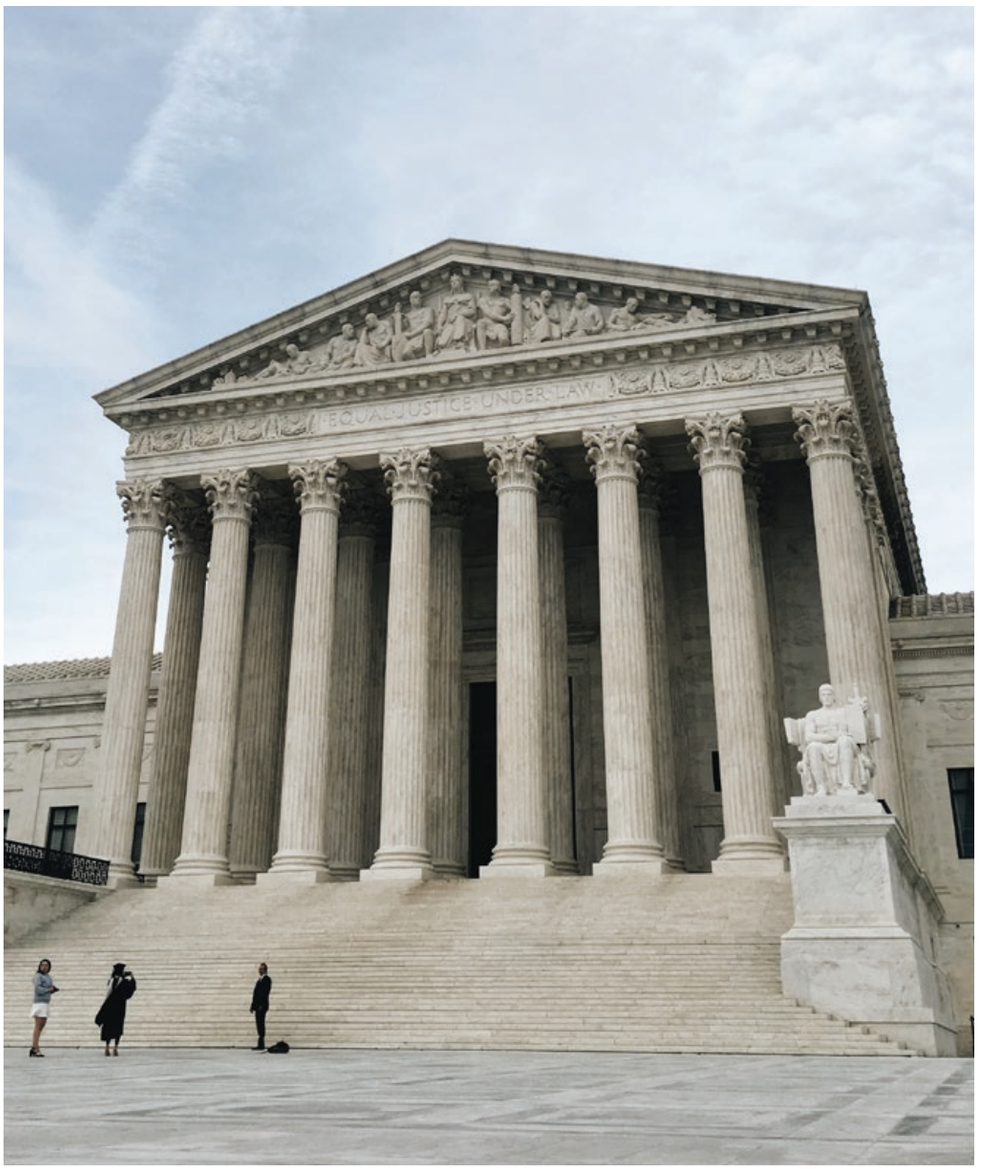
On June 30, 2025, the U.S. Supreme Court agreed to hear *M & K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund*, 92 F.4th 316 (D.C. Cir. Feb. 9, 2024), a case that will determine how withdrawal liability should be calculated when an employer withdraws from a multiemployer pension plan. The case centers on an important technical question under the Employee Retirement Income Security Act (ERISA) and the Multiemployer Pension Plan Amendments Act (MPPAA): should a plan use the financial and actuarial assumptions that were in place at the end of the plan year before the employer withdrew, or can it use updated assumptions adopted afterward, provided those updates are based on information available at the end of the plan year before the employer withdrew?

Under ERISA, when an employer withdraws from a multiemployer pension plan, it generally must pay its share of the plan's unfunded vested benefits, known as withdrawal liability. The amount of the withdrawal liability is calculated using the plan's financial status at the end of the year before the employer withdrew. The challenge is that actuarial assumptions, such as discount rates, mortality tables, and investment return projections, are often reviewed and updated after the plan year ends, once more data becomes available. In *M & K Employee Solutions*, the Supreme Court will decide whether plans can use those updated figures when calculating what an employer owes, or if they must rely on the older assumptions that were officially in place at year-end.

Lower courts are split on this issue. The Court of Appeals for the D.C. Circuit ruled in *M & K Employee Solutions* that pension plans can use updated financial assumptions

adopted after the end of the plan year, as long as those updates are based on information that was already available at that time. This approach emphasizes the use of the most accurate and relevant financial data while allowing some flexibility in applying it. In contrast, the Second Circuit Court of Appeals reached a different conclusion in *The National Retirement Fund v. Metz Culinary Management,* Inc., 946 F.3d 146 (2d Cir. 2020), holding that pension plans must calculate withdrawal liability strictly using only the assumptions that were in place at the end of the plan year. Under this approach, any assumptions adopted after the plan year, even if based on information available at that time, cannot be applied retroactively. This rule emphasizes certainty and finality in plan-year calculations.

The Court's decision on this issue is expected during the 2025–2026 term and is likely to have significant implications for both employers and pension plans. Either outcome can result in higher or lower withdrawal liability for employers, depending on whether more recent actuarial assumptions would have increased or decreased the measured unfunded vested benefits compared to the original year-end assumptions. A ruling that requires plans to use only the assumptions in place at year-end could create greater certainty and predictability for employers, but could produce liability amounts that differ from those that updated assumptions would have yielded. A ruling that permits post-year-end updates would allow plans to use assumptions they believe better reflect the plan's condition as of the measurement date, but would likewise produce liability amounts that could be higher or lower than the strict year-end assumptions, depending on the direction of the changes. Whichever rule the Court adopts, it will establish a uniform national standard that resolves the current circuit split and bring greater clarity to withdrawal-liability calculations for multiemployer plans across the country.



COURT RULING SHAKES UP ESG USE IN 401(K) PLANS

A recent decision from the U.S. District Court for the Northern District of Texas is reshaping how plan sponsors think about ESG (environmental, social, and governance) considerations in retirement plan investments. In a case involving American Airlines' 401(k) plan, the court held that fiduciaries breached ERISA's duty of loyalty by allowing non-financial ESG objectives to influence investment and proxy-voting decisions—despite finding no financial loss to participants.

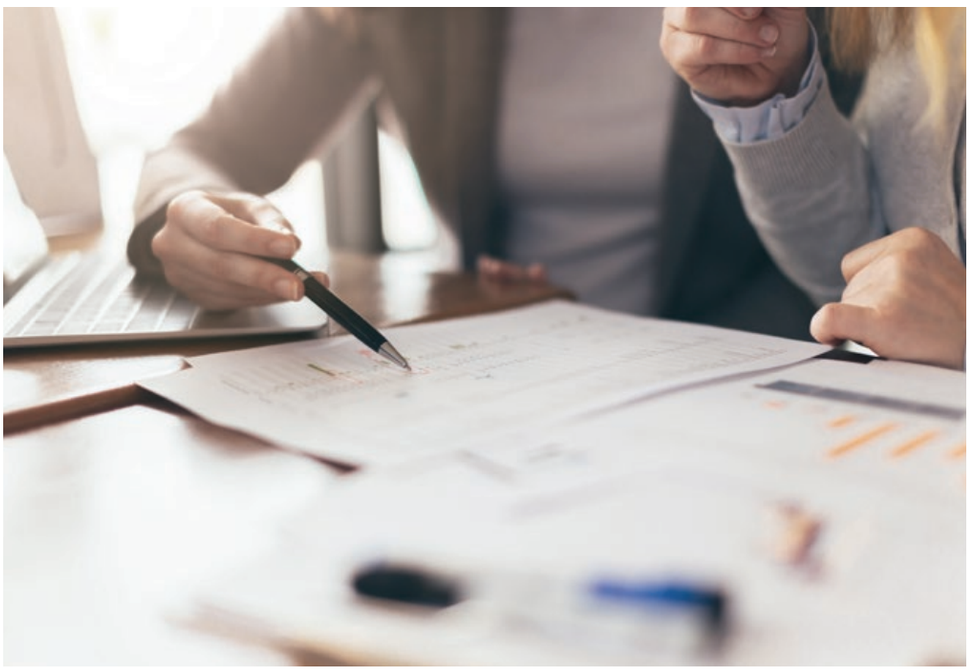
The lawsuit was brought by a pilot who argued that American Airlines permitted ESG-focused goals to influence plan investment decisions and that its selection of BlackRock as an investment manager was inconsistent with ERISA's requirement to act solely in participants' financial best interest (duty of loyalty). At issue was BlackRock's proxy-voting approach, which has historically supported ESG-related shareholder proposals.

The court agreed that American Airlines breached its duty of loyalty by exposing the plan to non-financial considerations, concluding that fiduciaries must prioritize economic benefits over social or environmental objectives. However, because the plaintiff could not establish financial losses, the court declined to award monetary damages.

Although the court concluded that participants experienced no financial loss, it still issued an injunction requiring considerable changes to the plan's oversight structure. Despite declining to award monetary damages, the Judge directed American Airlines to implement the following operational reforms:

1. REMOVE ESG-DRIVEN INVESTMENT FACTORS

Plan fiduciaries must eliminate the use of non-pecuniary ESG goals in investment selection and monitoring.



2. PROHIBIT ESG-INFLUENCED PROXY VOTING

The plan is prohibited from engaging in proxy voting that advances ESG objectives unrelated to financial performance.

3. REVISE COMMITTEE GOVERNANCE

American Airlines must appoint independent benefits committee members who are not affiliated with BlackRock or similar managers with ESG-aligned practices.

4. LIMIT USE OF CERTAIN ASSET MANAGERS

Investment managers that hold significant equity or debt in American Airlines—or whose voting practices reflect ESG preferences—may be barred unless certain criteria are met. These measures go beyond typical ERISA injunctive relief and highlight the court's intent to impose structural changes when monetary relief is unavailable.

This ruling should prompt plan sponsors to re-examine their oversight of investment managers—particularly large asset managers that have embraced ESG initiatives in the past. Even if those managers have recently moderated their ESG positions, their proxy-voting history may create perceived loyalty risks under this decision.

Importantly, the court's willingness to impose operational changes despite the absence of participant harm suggests that fiduciary exposure does not depend entirely on performance outcomes. Courts may still question whether fiduciaries adequately monitored investment managers, understood their proxy-voting guidelines, or ensured that financial considerations were the central decision-making factor. If you have any questions, please contact our office.

RISE IN CLASS ACTIONS REGARDING STABLE VALUE FUNDS

Stable Value Funds have long been a conservative investment option within 401(k) and other defined contribution retirement plans. They are designed to preserve principal and provide steady returns on investment through guaranteed investment contracts issued by insurance companies. These guaranteed investment contracts provide a fixed rate of return, also known as the crediting rate, which offers participants a guaranteed rate of return for the investment fund even in volatile markets.

However, over the last few years, Stable Value Funds have drawn increased scrutiny and have become the focus of several class action lawsuits against plan sponsors and fiduciaries. The lawsuits allege breaches of fiduciary duty under the Employee Retirement Income Security Act of 1974 ("ERISA"), raising important considerations and evaluations for both employers and participants.[1]

FIDUCIARY DUTIES UNDER ERISA

Under ERISA, fiduciaries must act "solely in the interest of the participants and beneficiaries"[2] with the "care, skill, prudence, and diligence"[3] that would be expected in managing a retirement plan of similar scope to Stable Value Funds. Plaintiffs in these ongoing cases claim that fiduciaries failed to meet this standard when selecting or maintaining certain Stable Value Funds that yielded significantly lower crediting rates than similar or identical stable value products available in the market.[1]

The lawsuits generally allege that, given the large size of the retirement plans involved, which often contain thousands of participants and billions of dollars in assets, the fiduciaries had substantial bargaining power to negotiate higher crediting rates.[1] Instead, plaintiffs claim the fiduciaries either failed to leverage that bargaining power or chose poor investment options that produced lower returns when compared to similar/identical options.[1] Over time, these lower rates did and will reduce the overall retirement savings of participants when compared to what they could have earned in more favorable Stable Value Funds with higher crediting rates.

In addition to the Stable Value Funds selection issue, many of these class action lawsuits are challenging how plan fiduciaries are using forfeited funds. Forfeited funds are the non-vested portions of employer contributions that revert to the plan when employees leave before meeting vesting requirements. Plaintiffs allege that fiduciaries used these forfeitures to offset employer contributions instead of applying them to administrative fees that are charged to participants' accounts.[1] This alleged conduct would constitute a breach of the fiduciary duty of loyalty by failing to act in the best interests of the plan's participants and instead prioritizing the interests of the sponsor/fiduciary.

REMEDIES SOUGHT

Generally, the lawsuits seek a declaration that fiduciaries breached their duties under ERISA, restoration of all losses to the plans resulting from those alleged breaches, disgorgement of any profits gained by the sponsors, and court orders requiring fiduciaries to reform their processes to prevent similar conduct in the future.

MOVING FORWARD

These ongoing cases highlight the growing attention on how plan sponsors/fiduciaries select and monitor the terms of Stable Value Funds. For sponsors and fiduciaries, this litigation may serve as a reminder and warning of what may come if ERISA's fiduciary duties of prudence and loyalty are disregarded. For participants, understanding the structure and performance of Stable Value Funds can be critical to ensuring their retirement plan assets are managed in a way that truly maximizes value over time to help support their preferred style of living in retirement.

[1] *Babinski v. Siemens Energy, Inc.*, No. 4:25-cv-03381 (S.D. Tex. July 22, 2025); *Hogan v. Paramount Global et al.*, No. 1:25-cv-07128 (S.D.N.Y. Aug. 27, 2025); *In re: Cigna ERISA Litigation*, No. 2:25-cv-02465 (E.D. Pa. May 14, 2025).

[2] 29 U.S.C. § 1104(a)(1)(A)

[3] 29 U.S.C. § 1104(a)(1)(B).

> *"The goal of the order is to ensure that Americans do not pay higher prices for brand-name drugs than patients in comparable countries."*

FOLLOWING THE TRUMP ADMINISTRATION'S IMPLEMENTATION OF THE "MOST-FAVORED-NATION" DRUG PRICING EXECUTIVE ORDER

On May 12, 2025, President Donald Trump signed an Executive Order titled *"Delivering Most-Favored-Nation Prescription Drug Pricing to American Patients."* According to the text of the order, the policy directs the Secretary of Health and Human Services, the U.S. Trade Representative, and the Secretary of Commerce to communicate most-favored-nation ("MFN") price targets to pharmaceutical manufacturers. It also states that if manufacturers fail to meet these targets, the administration will consider rulemaking or drug importation to reduce prices. The White House said the goal of the order is to ensure that Americans do not pay higher prices for brand-name drugs than patients in comparable countries.

As of late 2025, implementation of the executive order continues through agency guidance and manufacturer agreements. Public data on measurable cost reductions have not yet been released. The administration has stated that it expects full results to emerge as manufacturer agreements expand and state-level pricing adjustments take effect.

THE TIMELINE OF IMPLEMENTATION

On **May 20, 2025**, the Department of Health and Human Services and the Centers for Medicare & Medicaid Services ("CMS") announced expectations that drug manufacturers align U.S. prices with the lowest prices paid by a set of economic peer countries for brand-name drugs without generic or biosimilar competition.

On **July 31, 2025**, the White House sent letters to major pharmaceutical companies directing them to provide MFN pricing to Medicaid programs and to ensure that new drugs are not priced higher in the United States than in other nations.

On **September 30, 2025**, the White House announced an agreement with Pfizer. Under the agreement, Pfizer would provide state Medicaid programs access to MFN prices and offer discounts to consumers.

On **October 10, 2025**, the White House announced an agreement with AstraZeneca. The company agreed to provide MFN pricing for all state Medicaid programs and to apply MFN pricing for all new medicines it introduces to the U.S. market.

On **November 6, 2025**, the White House announced an agreement with Eli Lilly and Company and Novo Nordisk. The companies agreed to guarantee MFN prices on all new medications that they bring to the U.S. market, as well as provide every State Medicaid program access to MFN drug prices on their products

HOW MFN PRICING DIFFERS FROM OTHER DRUG REDUCTION EFFORTS

Beyond the executive order, legislation is in place that could also create future changes in medical pricing. The Inflation Reduction Act ("IRA") is set to begin in 2026 with Medicare drug price negotiations. The IRA, enacted in August 2022, gives CMS authority under the statute to negotiate prices directly with pharmaceutical manufacturers for certain high-cost drugs covered under Medicare Part D and Medicare Part B, which include coverage of outpatient drugs and physician-administered drugs respectively. This is referred to as the "Maximum Fair Price" and is negotiated using a multi-step process which should involve manufacturer data, clinical benefit assessments, and cost-effectiveness analysis.

The executive order, according to the U.S. Department of Health and Human Services, will utilize a target price from a similarly situated country that is in the Organization for Economic Co-operation and Development. While the MFN executive order utilizes international pricing models, the IRA does not use international prices as a reference. Instead, it establishes a negotiation process based on U.S. pricing models. CMS calculates its "Maximum Fair Price" using a variety of factors such as manufacturer research costs, federal financial support, market competition, and therapeutic alternatives.

Sources

- White House Executive Order, May 12, 2025
- HHS and CMS Press Releases, May 2025
- White House Fact Sheets, July 31, September 30, and October 10, 2025
- HHS Press Materials, 2025

LEARNING RESOURCES, INC. V. TRUMP

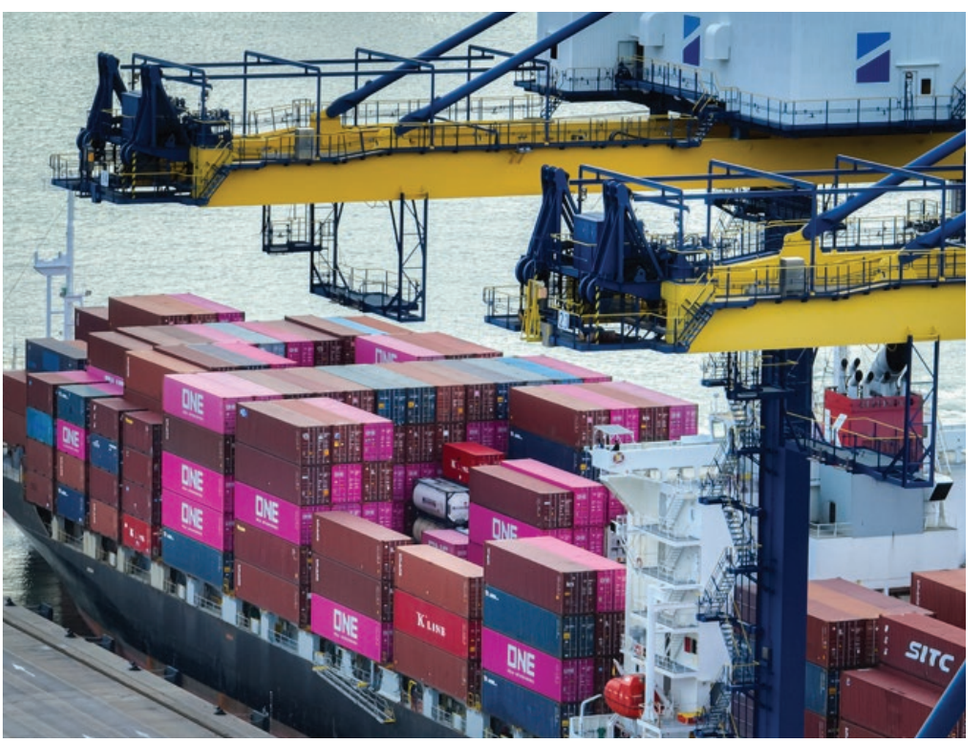
How the Court's Tariff Decision Could Affect Prices, Jobs, and Government Power

A case now before the U.S. Supreme Court, *Learning Resources, Inc. v. Trump,* is testing how far a president can go in using "emergency powers" to place tariffs on imported goods. This case could decide how much power the President has to change international trade rules without Congress. The outcome of this case stands to affect many U.S. businesses that depend on imported materials or products, especially in manufacturing, construction, and retail.

The lawsuit was filed by Learning Resources, Inc. and hand2mind, Inc., two small American companies that make educational toys and learning tools (the "Plaintiffs"). The Plaintiffs import many of their products from overseas (mainly China and other Asian countries) and filed suit against President Donald Trump and several other government officials over tariffs placed on imports during Donald Trump's presidency, which made it more expensive to bring those goods into the United States.

What's being argued: The legal fight centers on a law called the International Emergency Economic Powers Act ("IEEPA"), which gives the President special powers to deal with national emergencies, mainly in foreign affairs. The Plaintiffs claim IEEPA does not allow the President to create broad, long-term tariffs on normal trade goods. In their view, tariffs are a form of taxation, and under the Constitution, the power to tax and regulate trade rests with Congress, not the President. They claim that allowing the President to use IEEPA in this way gives the President too much power without clear approval from Congress.

The government, on the other hand, says the tariffs are lawful. Its lawyers argue that IEEPA allows a president, once a national emergency is declared, to "regulate" imports for national security reasons. They claim tariffs are a regulatory tool, not a tax, and that presidents have long used tariffs to influence foreign trade policy.

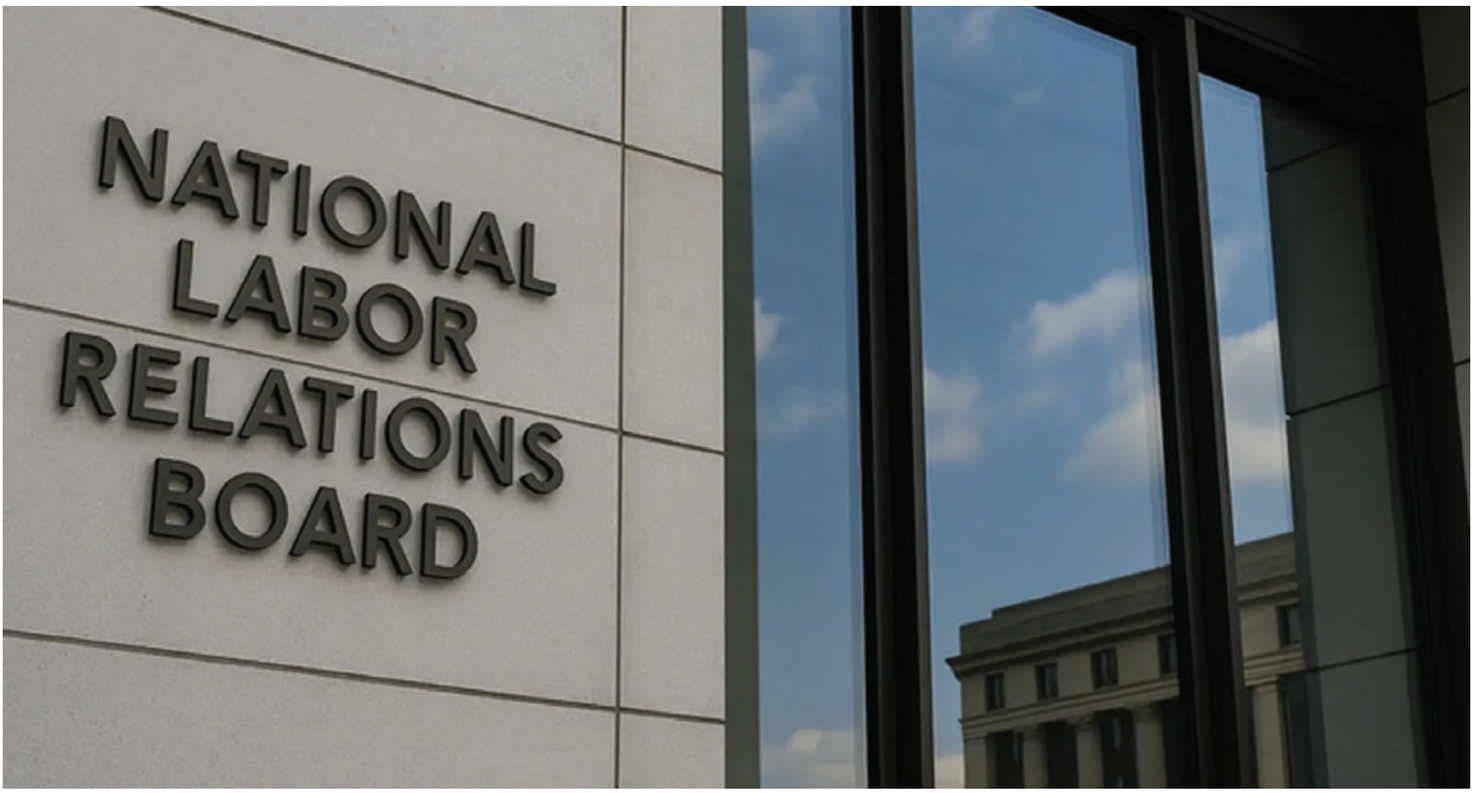


Why it matters for checks and balances: This case centers around checks and balances between the branches, a deep issue in American government. Congress writes the laws and controls taxes; the President enforces those laws; and the courts decide what the laws mean. The question here is whether Congress gave the President too much power under IEEPA, to the point that it might blur the line between who makes the laws and who carries them out.

If the Court agrees with the companies, it could rein in presidential authority and limit how emergency powers are used in economic matters in the future. If the Court sides with the government, it may strengthen the President's hand in trade and foreign policy, possibly allowing future presidents to use similar powers to raise or lower tariffs without new action from Congress.

Practical impact: For everyday businesses (especially those in manufacturing, construction, and retail that rely on imported goods) the outcome could affect costs and prices. Tariffs often raise the cost of imported materials, which can ripple through supply chains and ultimately affect consumers and workers.

What's next: A lower court temporarily blocked the tariffs for these companies earlier this year, but the government appealed. The Supreme Court agreed to take up the case directly, and heard arguments on November 5, 2025. A decision is expected sometime in 2026. Whatever the result, *Learning Resources, Inc. v. Trump* is expected to be one of the most important rulings in years on presidential power, trade, and the limits of emergency authority. For more information, please contact our office.



BATTLE OVER NLRB INDEPENDENCE: COALITION PRESSES ATTORNEY GENERAL TO INVALIDATE BIDEN BOARD DECISIONS

In early October 2025, the Senate Health, Education, Labor and Pensions Committee voted to advance one of President Trump's nominations to the National Labor Relations Board ("NLRB") and his nomination for General Counsel to a vote by the full Senate. Those advanced include former NLRB lawyer James Murphy to sit on the Board and Crystal Carey, partner at Morgan, Lewis & Bockius to serve as General Counsel. For the Board to resume its functions, it requires at least two appointments to reach its quorum of three. Currently, there is a single member of the Board, David Prouty, appointed by President Joe Biden.

Should Murphy and Carey be confirmed, functions at the Board would not immediately resume as the quorum will not be met. In addition, the government shutdown only added to the mounting back log of cases left over from the pandemic.

In April of this year, a coalition of employers and employer associations, known as the Coalition for a Democratic Workplace (CDW), submitted a letter addressed to Attorney General Pam Bondi, urging her to direct the NLRB to treat as non-binding several President Biden-era adjudications. The CDW cite to Executive Order 14215 "Ensuring Accountability for All Agencies" as giving the Attorney General authority to control the NLRB. That Order, signed February 18, 2025, states, among other things, that the President and Attorney General, "subject to the President's supervision and control, shall provide authoritative interpretations of the law for the executive branch" and that no executive-branch employee may advance an interpretation of the law contrary to those interpretations unless explicitly authorized.

CDW's letter contends that because of the order and the underlying theory of executive control, the Attorney General has authority to direct the NLRB to rescind or stop following certain precedents issued by the NLRB. The coalition lists about fifteen decisions from recent years that they say are inconsistent with statute, poorly reasoned, or injurious to efficient labor-management relations. They urge the Attorney General require the NLRB to disregard those decisions.

The letter frames Executive Order 14215 as granting supervisory control over independent regulatory agencies by requiring: review of proposed rules by the Office of Information and Regulatory Affairs (OIRA); establishment of White House-liaison positions in independent agencies; consultation with the Office of Management and Budget (OMB) on agency spending decisions; and the requirement that the President and Attorney General supply the "authoritative interpretation of law" for the executive branch, thereby preventing agencies from issuing conflicting legal interpretations.

In asking the Attorney General to direct the NLRB in this way, CDW highlights what it views as the inefficiencies and burdens imposed by the listed decisions on employers. The coalition characterizes several of the Board decisions as expanding employer obligations, narrowing management rights or exposing employers to greater risk of unfair labor practice liability, and seeks their wholesale reversal. The CDW's argument is that the NLRB, under the supervision/interpretation role of the Attorney General (per Executive Order 14215), should conform its interpretation of the law in ways more favorable to employer interests.

From a procedural and legal standpoint, the CDW's position raises questions about the interplay of Executive Order 14215 and agency independence. Executive Order 14215 states it shall be implemented "consistent with applicable law" and "subject to the availability of appropriations." Meanwhile, the statutory scheme governing the NLRB does not assign the Attorney General a role in directing how the Board treats precedent or in overruling Board decisions. The Administrative Procedure Act (APA) and the agency's own adjudicatory structure provide that changes in precedent come through the Board's internal decision-making or by appellate review, not by unilateral direction from external actors.

OSHA TURNS DOWN THE HEAT

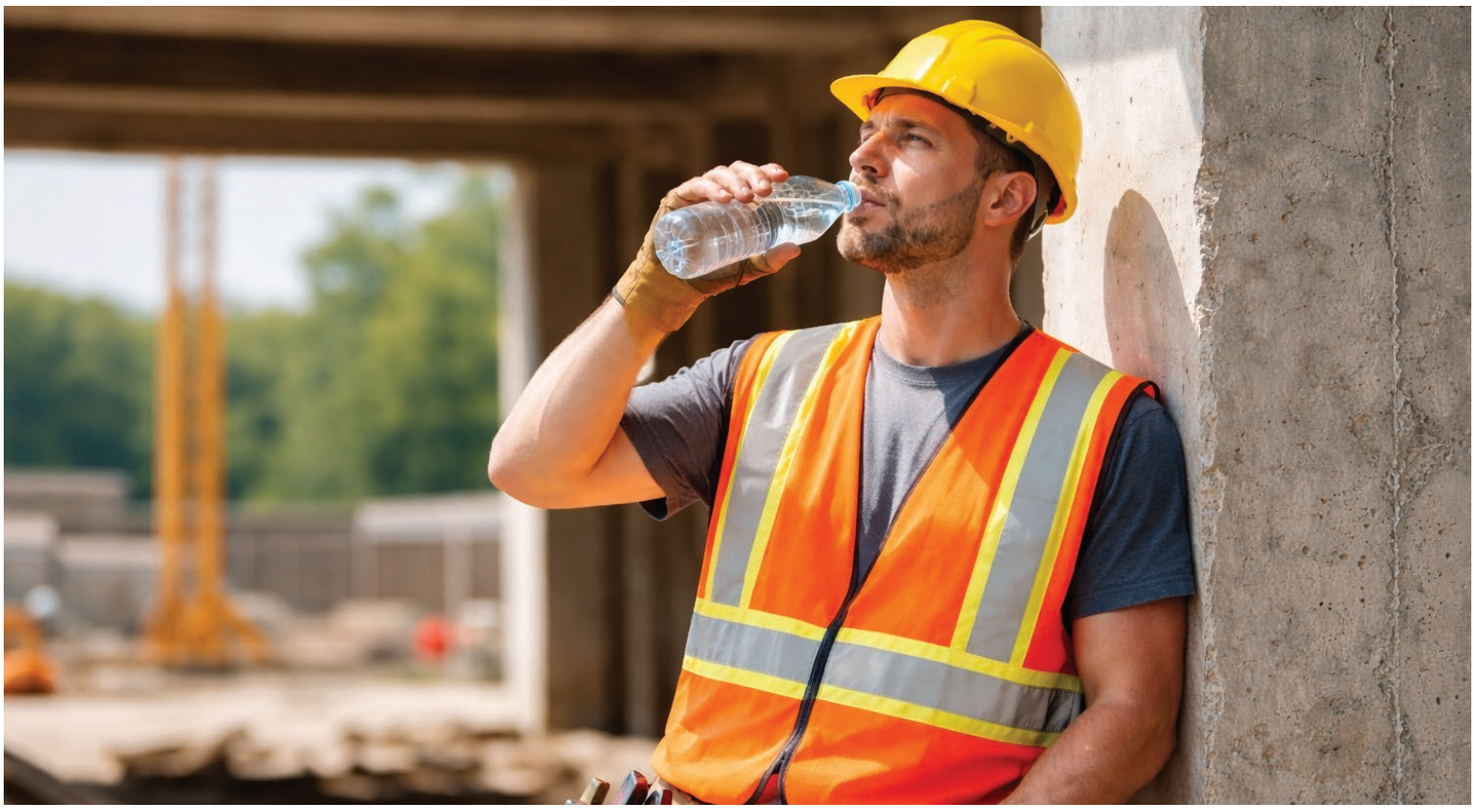
OSHA's Landmark Federal Heat Standard: Mandating Employer Plans to Combat Rising Workplace Heat Risks

The Occupational Safety and Health Administration ("OSHA") is proposing a new standard entitled *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings*. This first-of-its-kind federal standard revolves around reducing heat related injuries and deaths. It would "apply to all employers conducting outdoor and indoor work in all general industry, construction, maritime, and agriculture sectors where OSHA has jurisdiction."[1] The goal is to create a programmatic standard that requires employers to create a plan to evaluate and control heat hazards in the workplace.[2] An advance notice of proposed rulemaking ("ANPRM") regarding a federal standard for excessive heat protection was published in the Federal Register on October 27, 2021, where it received significant support.[3] The informal public hearing for the proposed rule was held from June 16, 2025 through July 2, 2025 and the post-hearing comment period was extended to October 30, 2025. Although some comments request an extended comment period, all signs point to the new standard being implemented some time in 2026.

Prior to the issuance of a new standard, OSHA must find that a significant risk of material harm exists and that the new standard will substantially reduce that risk.[4] OSHA's risk assessment "clearly demonstrates that there exists a significant risk of material harm to workers from occupational exposure to hear."[5] OSHA cites the deaths and heat related illnesses noted previously as the "significant risk of material harm."[6]

OSHA notes that there are three main sources of occupational heat exposure: (1) heat from the environment, including heat generated by equipment or machinery; (2) metabolic heat generated through body movement, which is proportional to one's relative level of exertion; and (3) heat retained due to clothing or personal protective equipment (PPE), which is highly dependent on the breathability of the clothing and PPE worn.[7] Understanding these primary sources of occupational heat exposure allows OSHA to tailor its proposed recommendations to effectively mitigate each type of risk in the workplace.

As for "substantially reducing the risk," the scope of the proposed standard would be quite broad. It would apply to "all employers subject to OSHA's jurisdiction – including



general industry, construction, maritime, and agriculture – to comply with the proposed requirements" with a few exemptions.[8] Employers would determine which work activities are covered and which are exempt, with exemptions including tasks unlikely to reach or exceed the initial heat trigger (which ranges from 80 °F to 100 °F depending on location), such as seasonal or low-exposure activities, and brief exposures of 15 minutes or less within any 60-minute period, which OSHA considers unlikely to cause significant heat-related illness.[9]

The proposed standard does not create a "one size fits all" plan to prevent HRIs. Instead, OSHA delegates all of the excessive heat prevention responsibility onto the employer. The proposed standard would require employers to develop and implement a comprehensive Heat Injury and Illness Prevention Plan ("HIIPP") for each work site.[10] The HIIPP must identify which work activities are covered, outline the policies and procedures necessary to comply with the standard, and specify the heat metric—heat index or wet bulb globe temperature —that will be used to monitor conditions.[11] The plan must address additional hazards, including heat stress from vapor-impermeable clothing, and document the hazard evaluation and protective policies for employees wearing such clothing.[12]

Timing is a key part of the protections: employers are only required to provide safeguards during periods when employees are exposed to heat at or above the initial trigger.[13] For example, if employees work from 9 a.m. to 5 p.m. but temperatures exceed the initial trigger only from 12 p.m. to 5 p.m., protections are required only during that latter period.

Drinking water is a core requirement. Employers must provide readily accessible, potable, and suitably cool water at no cost, supplying at least one quart per employee per hour.[14] Water must be close enough to employees to minimize the time needed to access it.[15]

Additional proposed measures include: providing shaded or cooled rest areas,[16] implementing mandatory paid rest breaks,[17] adjusting work schedules to avoid peak heat,[18] air-conditioning for outdoor workers,[19] monitoring employees for signs of heat illness,[20] and training employees on heat hazards, risk factors, and protective behaviors. Together, these measures aim to substantially reduce the risk of heat-related injuries and illnesses across covered workplaces.

[1] Occupational Safety and Health Administration, *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings*, Document ID OSHA-2021-0009, Docket No. OSHA-2021-0009, at 70698 available at https://www.regulations.gov/docket/OSHA-2021-0009
[2] *Id.*
[3] *Id.* at 70699
[4] *Id.* at 70766
[5] *Id.*
[6] *Id.*
[7] OSHA, *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings*, Document ID OSHA-2021-0009 at 70708
[8] *Id.* at 70768
[9] OSHA, *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings*, Document ID OSHA-2021-0009 at 70768
[10] *Id.* at 70773
[11] *Id.*
[12] *Id.*
[13] *Id.* at 70778
[14] *Id.*
[15] *Id.*
[16] *Id.* at 70786
[17] *Id.* at 70787
[18] *Id.* at 70749
[19] OSHA, *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings*, Document ID OSHA-2021-0009 at 71038
[20] *Id.* at 70772

FEDERAL REVIEW PAUSES CTA RED AND PURPLE LINE PROJECTS

Two major Chicago Transit Authority (CTA) projects, (1) the Red Line Extension and (2) the CTA Red and Purple Modernization Program, are currently undergoing federal review, prompting the suspension of previously approved federal funding. According to the U.S. Department of Transportation (USDOT), both projects are being reviewed to determine whether any unconstitutional hiring practices are occurring. Approximately $2.1 billion in federal funds is frozen pending the outcome of the review.

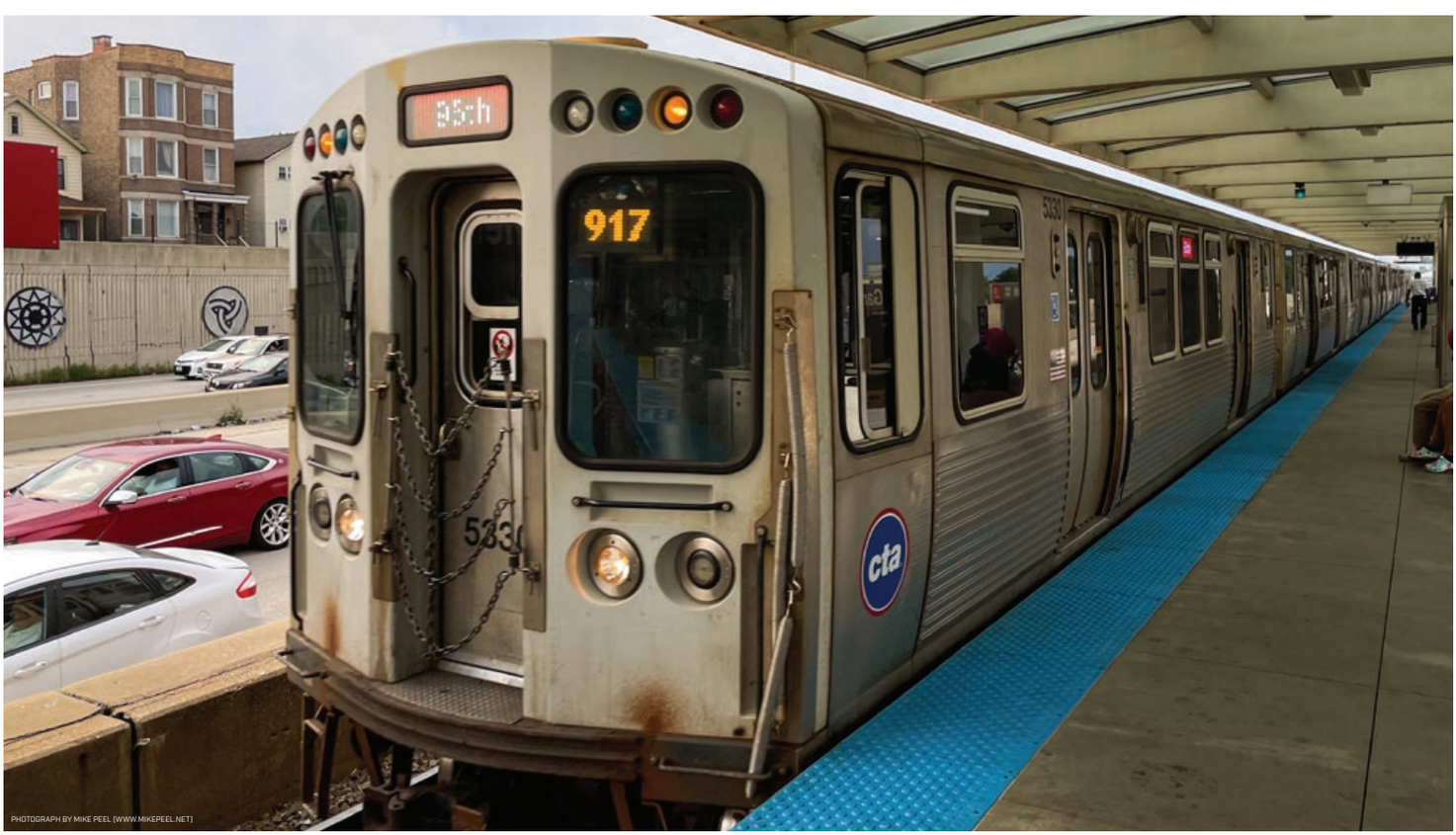
THE PROJECT

The Red Line Extension project intends to extend CTA heavy rail services by 5.6 miles south from 95th/Dan Ryan to 130th Street. The project includes four fully accessible new stations that will be located at 103rd Street, 11th Street, Michigan Avenue, and 130th Street.[1] Parking facilities and multimodal connection to each new station[2] including bus, bike, and pedestrian establishments are to be included in the expansion project. After close to a two-year procurement process, the CTA selected Walsh-VINCI Transit Community Partners to engineer, design, and lead the construction of the extension.[3] Early planning work is currently occurring, with Walsh-VINCI anticipating groundbreaking to occur in 2026, with peak construction underway in 2027 through 2030.[4]

Federal support for the project was formalized in January 2025 when the Federal Transit Administration (FTA) and the city of Chicago executed a $1.9 billion Full Funding Grand Agreement (FFGA) for the Red Line Extension Project,[5][6] marking a pivotal step in the project's advancement. The agreement was signed by the Biden-Harris Administration under the Capital Investment Grants (CIG) Program, enabled by the Bipartisan Infrastructure Law.[7] The project marks the culmination of more than 30 years of local planning and as well as the largest transit infrastructure grant in CTA history.[8]

FEDERAL FUNDING PAUSE & REVIEW

On October 3, 2025, the Office of Management and Budget (OMB) and the U.S. Department of Transportation (USDOT) jointly announced that the federal funding previously granted for both the Red Line Extension and the Red and Purple Modernization Projects would be suspended pending review of contracting compliance procedures. The pause coincided with the release of a new Interim Final Rule that the USDOT issued the same day, which prohibits race and sex based contracting requirements for recipient of federal transportation grants. Within §26.1 of the Federal Register's Interim Final Rule, it's noted that the Department revised the objects of the DBE program to emphasize



PHOTOGRAPH BY MIKE PEEL (WWW.MIKEPEEL.NET)

that it must operate in a nondiscriminatory, race and sex neutral manner while promoting efficiency.[9] Further, under §26.5 the definition of "socially and economically disadvantaged individual" is amended to remove race and sex-based presumptions that were previously used to establish eligibility.[10] Under this new rule, all applicants must make an individualized showing of disadvantage regardless of race or sex.[11]

As a part of the rule's implementation process, USDOT initiated a review of the CTA's Disadvantaged Business Enterprise (DBE) program to determine whether those contracting practices align with constitutional standards of equal employment opportunities. Federal officials have indicated that there is no timetable to complete review as the federal government shutdown was cited as a factor that may affect the review's pace.[12]

Following the USDOT announcement, on October 7, 2025, U.S. Senators Tammy Duckworth and Dick Durbin, joined by Representatives Mike Quigley, Robin Kelly, and Danny Davis, sent a formal letter to the Transpiration Secretary Andrew Duffy, seeking clarification on the funding pause. The letter outlined concerns that the funding freeze could impact already executed contracts, as well as noting their perspective on the DBE Program's purpose, while also emphasizing that the CTA projects are significant job creators.

The federal decision to pause funding similarly generated a response from Illinois Governor JB Pritzker, who condemned the action. Lieutenant Governor Juliana Stratton echoed his sentiments, declaring that the decision is punitive given the current discourse occurring between Governor Pritzker and President Trump.[13]

LEGAL AND REGULATORY CONTEXT

The funding review occurs concurrently with recent changes in federal guidance on the use of contractor selection criteria that is related to demographic classifications, such as gender or race. Federal agencies point to recent case law, such as the 2023 SCOTUS decision in *Students for Fair Admissions v. Harvard*, as pertinent to the reassessment of federally funded programs that incorporate policies involving equal protection standards.

CURRENT PROJECT STATUS AND NEXT STEPS

At present, the groundbreaking, originally anticipated for early 2026, may be delayed depending on the timing and outcome of the review. Federal officials have not specified when the review will conclude or whether the paused funding will ultimately be reinstated. John Paul Jones, a co-founder of the Red Line Extension TIF Coalition, remains optimistic stating that "We have to use this season as well as the next season to continue conversations with Washington, D.C., about their funding obligations and we believe that we should be able to find the right middle ground to get the agreement we need from the federal government," Jones said.[14] He hopes that an agreement will be made by February or March to stay on track with the project's groundbreaking.[15]

For now, the future timeline of the Red Line Extension Project depends on the results of the federal review and any subsequent policy determinations regarding the implementation of the USDOT's contracting rule.

[1] City of Chicago Planning and Development. (n.d.). *Red Line Extension (RLE) TIF*. City of Chicago: ed Line Extension (RLE) TIF
[2] Federal Transit Administration. (n.d.). Red Line Extension Project Profile | FTA.
[3] Mannion, A. (2024, August 15). *Walsh-Vinci chosen for $2.9B red line extension in Chicago*. Engineering NewsRecord RSS.
[4] *A successful Red Line extension project is one where folks who live in the area can confidently say, this is our project*. WALSH VINCI Transit Community Partners. (n.d.).
[5] Durbin, Duckworth, Chicago delegation announce $1.9 billion funding agreement with FTA to support Chicago's Red Line Extension Project | U.S. senator Dick Durbin of Illinois. (2024, December 18).
[6] *Investing in America: Biden-Harris Administration announces close to $2 billion construction grant to advance the Chicago Transit Authority's Red Line Extension Project*. INVESTING IN AMERICA: Biden-Harris Administration Announces Close to $2 Billion Construction Grant to Advance the Chicago Transit Authority's Red Line Extension Project | FTA. (2025, January 10).
[7] Ibid.
[8] Chicago Transit Authority . CTA Red Line extension in line for $1.973 billion in federal funding - Press Releases - News - CTA. (2024, September 8).
[9] *Federal Register* 90, no. 190 (October 3, 2025).
[10] Ibid.
[11] Department of Transportation, "Disadvantaged Business90 Fed. Reg.
[12] *U.S. Department of Transportation Statement on Review of Chicago's discriminatory, unconstitutional processes*. U.S. Department of Transportation. (2025, October 3).
[13] Gov. Press. "Gov. Pritzker and Illinois Elected Leaders Denounce the Freezing of Transit Funding for Chicago." The State of Illinois Newsroom, October 8, 2025.
[14] Ortiz, Joel. Chicago Organizers Feel Whiplash as Trump Administration freezes funding for Red Line Extension | Chicago news | WTTW, October 7, 2025.
[15] Ibid.

JOHNSON +KROL
ATTORNEYS AT LAW