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Using the Law to Remediate Injustice: Legal Strategies for Nonprofits and Foundations

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Nonprofit Voices on Legal Risk from DEI Backlash: Preliminary Data for Foundations and Intermediaries

Fair Chance recently surveyed some relatively small nonprofits about their knowledge, concerns, policies, and needs regarding legal backlash to DEI and racial equity and justice. We are sharing some themes and take aways from the data to assist foundations and intermediaries in thinking about how to engage with grantees and other stakeholders. Thank you to the participants in the survey!

Knowledge of DEI Backlash Issues	Major Concerns	Nonprofit Policies and Race	Desired Assistance
• Leaders report knowing some or a lot about the growing legal issues/risks (80%) • Others know little or nothing about the issues/risks (20%) • Takeaway: Ongoing education is needed.	• Top concern: Loss of funding due to foundations pulling back on racial equity commitments • Other concerns: getting sued, pushback on prioritizing or restricting race, and having to reframe mission and programming or revise culturally specific approach • Takeaway: Because of the waterfall structure of foundations' policies impacting nonprofits, as well as nonprofits facing their own direct risks, proactive leadership by foundations and intermediaries, plus engagement with nonprofits, are critical.	• Respondents are spread about evenly along a spectrum in regard to their policies: 1. Specifically name racial group in mission 2. Use restriction or prioritization in eligibility for programs 3. Use proxy language such as "under-resourced" to reach target population 4. Make no race conscious decisions • Takeaway: Nonprofits are impacted in different ways by legal risk and by risk tolerance level.	• Top response: Education on the issues and resources for risk management • Second: Risk assessment with qualified legal counsel • Third: Thought partnership with an intermediary or consultant to complement legal counsel • Specific request: Organization of a task force to push back • Takeaway: Nonprofits are seeking a variety of supports and this may change over time as the legal landscape evolves and nonprofits learn more.

Please consider this a preliminary indication of things that may be helpful as you engage and listen to your grantees and stakeholders. The data above is based on responses from a sampling of DC area nonprofits in late summer 2024.

Please contact Gretchen Van Der Veer (gvanderveer@fairchance.org) or Taylor Cobb (tcobb@fairchance.org) to explore collaboration with Fair Chance on our mission to strengthen community-based nonprofits to achieve life-changing results for children, youth, and families in communities impacted by racism, discrimination and poverty.

