

## mBOLDen Change Position Statement

### **Beyond the Rhetoric: Why Eliminating Disparate Impact Protections is a Direct Attack on Equality**

Executive Order 14281, signed by President Trump on April 25, 2025, declares that “a bedrock principle of the United States is that all citizens are treated equally under the law.” We agree.

But equality under the law is not simply a matter of formal words or good intentions. It requires **equal protection**—and that means confronting both **overt discrimination** and **the unjust effects of facially neutral policies**.

**Without protections like disparate impact standards, laws and policies can become a cover for injustice**, allowing systemic discrimination to persist beneath a veneer of neutrality—making inequity harder to detect, harder to challenge, and easier to deny. By ignoring real-world impacts, the law itself becomes a tool for gaslighting marginalized communities, dismissing the barriers they face as personal failings rather than systemic design.

True equality under the law demands accountability for how systems work—and who they work for. By eliminating disparate impact protections, this Executive Order undermines the very constitutional commitments it claims to uphold.

Despite the rhetoric of fairness, this order does not protect individual rights. It protects entrenched power. It rolls back decades of civil rights protections that were created precisely because facially “neutral” policies can—and do—perpetuate racial, gender, and economic inequality without explicit intent.

**Here's the truth: Disparate impact isn't about guaranteeing equal outcomes. It's about recognizing when supposedly neutral systems produce discriminatory results—and giving communities a way to challenge them.**

If a hiring practice, a lending rule, or a housing policy systematically disadvantages people of color, women, disabled individuals, or other marginalized groups—even without overt discrimination—that's not meritocracy. That's systemic exclusion.

### **What This Executive Order Gets Wrong**

**1. It distorts the reality of discrimination.** Discrimination today is often structural, not overt. It happens when barriers are baked into policies, practices, and standards that appear neutral but produce deeply unequal results. Disparate impact law acknowledges that ignoring the unjust effects of facially neutral policies reinforces systemic inequality.

**2. It weaponizes "neutrality."** Pretending not to see race, gender, or other forms of structural disadvantage doesn't create fairness. It creates willful ignorance. True equity requires acknowledging the forces that shape opportunity—and acting to dismantle them.

**3. It undermines accountability.** Disparate impact standards exist because without them, there is no meaningful check on policies that disadvantage whole communities. Rolling back these standards tells businesses, governments, and institutions: as long as your policies sound neutral, you can ignore the real-world harm you cause.

**4. It rewrites the purpose of civil rights law.** Civil rights protections were never meant to address only overt discrimination. They were designed to root out patterns of disadvantage wherever they exist. This order turns that commitment upside down—limiting civil rights protections precisely where they are most needed.

### **Why Disparate Impact Protections Matter**

Real-world examples make it clear:

- **Housing:** Blanket bans on tenants with prior arrests disproportionately impact Black and minority renters—even when no discriminatory intent is shown. The United States has the highest incarceration rate in the world, and tens of millions of Americans have some form of criminal legal system contact—whether an arrest or conviction. Even an arrest record alone, without a conviction, can be grounds for denial of housing. The overbroad reach of the criminal legal system is not experienced equally: communities of color, particularly Black and Latino communities, are disproportionately policed and incarcerated. Without disparate impact protections, these systemic inequities are compounded in housing access.
- **Lending:** Seemingly neutral lending practices have long denied women and communities of color access to credit. Until 1974, women often needed a male cosigner to obtain a mortgage or credit card. Today, facially neutral policies like heavy reliance on credit scores can disproportionately disadvantage women, who historically face wage gaps and career interruptions. Without disparate impact protections, it will be harder for women to enforce their financial rights.
- **Employment:** Hiring criteria and workplace practices that appear neutral can disproportionately exclude qualified candidates from marginalized communities. Overreliance on degree requirements, criminal background checks, gaps in employment history, or "cultural fit" assessments often screen out Black, Latino,

Indigenous, and women job seekers, even when those factors are unrelated to job performance. Structural inequities like unequal access to higher education, over-policing, and caregiving responsibilities fall hardest on marginalized communities, compounding exclusion in hiring, retention, and promotion. Without disparate impact protections, employers are less accountable for ensuring that employment practices truly promote opportunity based on skill and potential—not hidden bias.

- **Healthcare:** Healthcare systems and policies that seem neutral can reinforce and exacerbate disparities across race, gender, income, disability, and geography. Systemic discrimination plagues healthcare delivery, contributing to higher maternal mortality rates among Black women, underdiagnosis and mistreatment of women's pain, disparities in cancer screening and treatment, and delayed or denied care for people with disabilities. Insurance policies that fail to account for these systemic barriers disproportionately leave marginalized communities underinsured or uninsured. Diagnostic algorithms that rely on biased historical data can underestimate illness severity in people of color and women. Without disparate impact protections, healthcare systems are less accountable for correcting inequities that result in preventable illness, suffering, and early death.
- **Voting:** Seemingly neutral voting laws—like strict voter ID requirements, polling place closures, and reduced early voting windows—disproportionately burden Black, Brown, disabled, young, and low-income voters. Without disparate impact protections, barriers to the ballot box become harder to challenge—even as they systematically erode democratic participation.

Without the ability to challenge policies based on their outcomes, historically marginalized groups lose critical tools for enforcing their rights and accessing opportunities that were denied to past generations.

### **What True Equality of Opportunity Requires**

If we are serious about advancing equality of opportunity—not just preserving privilege under the guise of neutrality—we need policies that address barriers to opportunity at every stage.

A real commitment to equality of opportunity requires taking action across key areas to:

#### **1. Strengthen and Enforce Disparate Impact Protections**

- Reinforce the principle that true equality requires examining impact. Intent matters. Impact matters more.

- Despite the Executive Order, disparate impact liability under Title VII of the Civil Rights Act remains intact, as codified by Congress in 1991. Private employers and institutions must understand: the law still stands—and individuals retain the right to challenge practices that disproportionately exclude or disadvantage protected groups.

## **2. Expand Access to Fair Credit and Lending**

- Strengthen the Equal Credit Opportunity Act to account for historical barriers faced by women and communities of color.
- Monitor and regulate credit scoring and AI-driven lending practices that replicate past discrimination.

## **3. Advance Labor Equity**

- Raise the federal minimum wage and eliminate subminimum wages. When work provides stability and a living wage, people can pursue education, invest in the future, and participate fully in civic life.
- Expand access to paid family leave and caregiving supports to ensure caregiving doesn't penalize workers—especially women.

## **4. Fund Equitable Education**

- Invest in K-12 education, especially in historically underfunded communities. Quality education should not depend on a child's zip code or parents' wealth.
- Support expanded access to higher education for marginalized groups through scholarships, support programs, and outreach initiatives.

## **5. Ensure Housing Equity**

- Enforce fair housing laws. Access to safe, affordable housing is a basic condition for opportunity.
- Invest in affordable housing and protect against exclusionary zoning practices.

## **6. Strengthen Healthcare Access and Equity**

- Expand affordable, high-quality healthcare coverage for all communities.
- Address systemic barriers and social determinants of health—because opportunity cannot flourish without health security.
- Strengthen anti-discrimination protections in healthcare settings to ensure care is fair, accessible, and free from bias based on race, gender, disability, income, or identity.

## **7. Rebuild a Trust-Based Safety Net**

- Remove punitive eligibility rules for public assistance.
- Expand programs like guaranteed income that provide unconditional, flexible cash support.

## **8. Democratize Power and Representation**

- Pursue campaign finance reform and dismantle structures that concentrate political influence among the wealthy and powerful.
- Ensure historically excluded communities have meaningful representation in policymaking and governance.
- Expand access to voting by:
  - Implementing same-day voter registration.
  - Eliminating unnecessary barriers to voter registration.
  - Expanding early voting and absentee voting.
  - Increasing the number of accessible voting centers.
  - Maintaining accurate, up-to-date voter rolls without purging eligible voters.
  - Restoring voting rights to citizens with felony convictions.

A real democracy is one where every voice counts—and every community has a seat at the table.

## **Closing**

**Equality of opportunity is not achieved by ignoring barriers—it's built by dismantling them.**

We envision a future where the rules are fair.

Where effort meets real support.

Where dignity, health, and possibility are rights—not privileges.

This is the work ahead.

**It demands bold change.**

And it starts by rejecting the myths and fighting for the future we deserve.

**Join Us.**