



THE EQUAL PROTECTION PROJECT
A Project of the Legal Insurrection Foundation
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May 19, 2023

BY EMAIL (OCR.Chicago@ed.gov)

Chicago Office
Office for Civil Rights
U.S. Department of Education
John C. Kluczynski Federal Building
230 S. Dearborn Street, 37th Floor
Chicago, IL 60604

**Re: Discrimination Civil Rights Complaint Against University of Minnesota
Concerning Undergraduate Research Program Excluding White Students**

To Whom It May Concern:

This is a federal civil rights complaint pursuant to the U.S. Department of Education's Office for Civil Rights ("OCR") discrimination complaint resolution procedures. *See* 42 U.S.C. § 2000d-1; 34 C.F.R. §§ 100.7, 100.8, and 100.9.

We write on behalf of the Equal Protection Project ("EPP") of the Legal Insurrection Foundation, a non-profit that, among other things, seeks to ensure equal protection under the law and non-discrimination by the government, and that opposes racial discrimination in any form.

We bring this civil rights complaint against the University of Minnesota ("UMN"), a public institution, for its past, present, ongoing, and planned future practice of discriminating on the basis of race, color and national origin in its Multicultural Summer Research Opportunities

Program (“MSROP”) – a 10-week summer research program for undergraduate students that is *only* available to non-white applicants.

The MSROP violates Title VI of the Civil Rights Act of 1964 (“Title VI”), 42 U.S.C. § 2000d, et seq., and its implementing regulations at 28 C.F.R. Part 100. It also violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.¹ “It is a sordid business, this divvying us up by race.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006) (Roberts, C.J., dissenting). Nowhere is that more true than here.

The OCR should order that UMN’s discriminatory practices be discontinued immediately and take all necessary enforcement action to effectuate that order. This includes, if necessary, imposing fines, initiating administrative proceedings to suspend, terminate, or refuse to grant or continue federal financial assistance, and referring the case to the Department of Justice for judicial proceedings to enforce the rights of the United States.

The University’s Multicultural Summer Research Opportunities Program

The University of Minnesota offers a paid summer research program for undergraduate students called the “Multicultural Summer Research Opportunities Program,” or MSROP. According to UMN’s website:

“MSROP is an intensive 10 week summer program in which **undergraduate students of color** work full-time with a faculty mentor on a research project. The cohort-based program includes a series of seminars preparing students for graduate school and developing research skills.”²

The stated purpose of the program is “to prepare students of color and Native Americans for graduate school.”³

¹ The MSROP also violates Minnesota’s Human Rights Act, which makes it a criminal offense for an educational institution to limit access to any educational program on the basis of race. Minn. Stat. §§ 363A.13 (1)-(4), 363A.30(4). And, it runs afoul of UMN’s own Equal Opportunity Statement, which mandates that the university provide “equal access to and opportunity in its programs ... without regard to race, color [or] national origin[.]” See <https://tinyurl.com/3k57btkd> [https://archive.is/mGjVh] (accessed on May 17, 2023).

² <https://ugresearch.umn.edu/opportunities/msrop> [https://archive.is/WeLSA] (accessed on May 4, 2023) (emphasis added).

³ <https://apply-msrop.umn.edu/> [https://archive.is/RPZ42] (accessed on May 4, 2023).

Multicultural Summer Research Opportunities Program

Program Dates: June 5 - August 11, 2023

The intent and goal of MSROP is to prepare students of color and Native Americans for graduate school. We encourage applications from diverse sophomores, juniors, and seniors (who are enrolled for at least one additional semester after the summer program) from any academic department and University of Minnesota college campus.

As depicted in the screen captures below, UMN publicly promotes the program on its website as a summer program exclusively for “undergrads of color.”⁴

Multicultural Summer Research Opportunities Program



The screenshot shows a promotional banner for the Multicultural Summer Research Opportunities Program (MSROP). The banner features a teal background on the left with the text 'MSROP' in white. To the right, there are three small images: a group of students in a lab, a close-up of a person's face, and a student working with a microscope. Below the banner, the text describes the program as an intensive 10-week summer program where undergraduate students of color work full-time with a faculty mentor on a research project. It also includes the program dates (June 5 - August 11, 2023) and a note that the 2023 program is planned to be in-person.

MSROP
Multicultural Summer Research Opportunities Program

MSROP is an intensive 10 week summer program in which undergraduate students of color work full-time with a faculty mentor on a research project. The cohort-based program includes a series of seminars preparing students for graduate school and developing research skills.

Program Dates
June 5 - August 11, 2023 (ten weeks)

**MSROP 2023 is planned to be in-person so participants must be able to be on campus.*

⁴ <https://ugresearch.umn.edu/opportunities/msrop/faq> [https://archive.is/CfgiY] (accessed on May 4, 2023).



In addition to promoting the program on its website, UMN also advertises the program on social media:



According to UMN’s website, students who are selected to participate in the program receive a \$6,000 stipend for personal and research expenses.⁵ However, to be eligible for the program, applicants must, among other things, “identify as a Student of Color or Native American.”⁶

⁵ <https://ugresearch.umn.edu/opportunities/msrop> [https://archive.is/WeLSA] (accessed on May 4, 2023) (emphasis added).

⁶ *Id.*

Eligibility Requirements

- Identify as a Student of Color or Native American
- U of M sophomore, junior, or senior (enrolled in at least one semester after the summer program)
- completed at least 45 credits by the end of previous fall semester
- must have a minimum cumulative GPA of 3.0
- not a previous MSROP participant
- must be a US citizen or permanent resident*** those with unique citizenship status, please contact us

To ensure that white students are not accepted, the application process requires all applicants to provide their demographic information.⁷

Steps to Apply

Complete the **online application**. The application includes the following:

1. Demographic information, academic information, research interests, and faculty mentor information.

According to the UMN website, depicted in the screen capture below, the 2023 MSROP runs from June 5 through August 11.⁸

Program Dates

June 5 - August 11, 2023 (ten weeks)

**MSROP 2023 is planned to be in-person so participants must be able to be on campus.*

The application deadline was March 3, 2023, and applications were reviewed by UMN during March 2023. Select candidates were contacted for interviews in late March, and those who were chosen to participate in the program were informed of their selection in early April.⁹

⁷ <https://ugresearch.umn.edu/opportunities/msrop> [https://archive.is/WeLSA] (accessed on May 4, 2023).

⁸ <https://ugresearch.umn.edu/opportunities/msrop> [https://archive.is/WeLSA] (accessed on May 4, 2023).

Application Review Process

Applications will be reviewed throughout March, with select candidates contacted for interviews in late March. The 30-minute interview process is another step to identify the strongest candidates, not a guarantee of acceptance. Notification of selection (through email) is early April.

OCR Has Jurisdiction

OCR has both subject matter and personal jurisdiction over this complaint.

Title VI of the Civil Rights Act prohibits intentional discrimination on the basis of race in any program that receives federal financial assistance. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562, 1569 (2022); *Mumid v. Abraham Lincoln High Sch.*, 618 F.3d 789, 794 (8th Cir. 2010). Section 601 of Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. Section 602 authorizes “[e]ach Federal department and agency which is empowered to extend Federal financial assistance to any program or activity” to “effectuate the provisions of section 2000d ... by issuing rules, regulations, or orders of general applicability[.]” 42 U.S.C. § 2000d-1. Title VI regulations promulgated by the Department of Education provide that recipients of federal funds may not discriminate based upon race or utilize race-based criteria to determine who is entitled to benefits. 34 C.F.R. § 100.3(b)(1), (2).

Public universities that receive federal financial assistance are covered by Title VI. *See Rowles v. Curators of the Univ. of Mo.*, 983 F.3d 345, 355 (8th Cir. 2020) (“Title VI prohibits discrimination on the basis of race in federally funded programs,” and thus applies to public universities receiving federal financial assistance); *Wooden v. Bd. of Regents of the University System of Georgia*, 32 F. Supp. 2d 1370, 1379 (S.D. Ga. 1999) (to state a claim under Title VI, a plaintiff must allege that the defendant is “(1) receiving federal funds; and (2) engaging in racial discrimination”).

UMN receives federal funding. *See Ng v. Bd. of Regents of the Univ. of Minn.*, No. 21-cv-2404 (SRN), 2022 U.S. Dist. LEXIS 35877, at *2 (D. Minn. Mar. 1, 2022) (“The University [of Minnesota] is a co-educational, public institution that receives federal funding.”). Indeed, UMN’s proposed operating budget for Fiscal Year 2023 states that UMN will receive over \$18

⁹ *Id.*

million in federal appropriations alone, not taking into account funds from federal research grants and contracts.¹⁰

The Complaint Is Timely

This complaint is timely brought because it alleges that UMN is engaged in a continuing violation and an ongoing pattern or practice of discrimination. Further, this complaint includes allegations of discrimination based on race, color and national origin that occurred within the last 180 days.

The Race-Based Undergraduate Summer Research Program Is Unlawful

Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. Title VI’s protections are coextensive with the Equal Protection Clause of the Fourteenth Amendment. *See Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 287 (1978).

The Fourteenth Amendment’s Equal Protection Clause declares that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV § 1. The Supreme Court has explained that “[t]he central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race.” *Washington v. Davis*, 426 U.S. 229, 239 (1976). Consequently, “any official action that treats a person differently on account of his race or ethnic origin is inherently suspect.” *Fisher v. Univ. of Tex.*, 570 U.S. 297, 311 (2013). “A statute or policy utilizes a ‘racial classification’ when, on its face, it explicitly distinguishes between people on the basis of some protected category.” *Hayden v. Cnty. of Nassau*, 180 F.3d 42, 48 (2d Cir. 1999).

It is well established that “when the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny.” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007); *accord Adarand Constructors v. Pena*, 515 U.S. 200, 227 (1995). The same is true for classifications based on national origin. *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440 (1985); *see generally Rice v. Cayetano*, 528 U.S. 495, 517 (2000) (“Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people.”); *Loving v. Virginia*, 388 U.S. 1, 11 (1967) (“the Equal Protection Clause demands that racial classifications . . . be subjected to the ‘most rigid scrutiny.’”). Thus, when Title VI applies, a recipient of federal funding is prohibited from engaging in race-based classifications unless such classifications can withstand strict scrutiny.

¹⁰ https://drive.google.com/file/d/11C3lwifC97F0mskY1B_0EALaNmkVD3de/view
[<https://archive.is/QSt6x>] (accessed on May 5, 2023).

Under strict scrutiny, suspect classifications “are constitutional only if they are narrowly tailored measures that further compelling governmental interests.” *Adarand*, 515 U.S. at 227. A “racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification.” *Shaw v. Reno*, 509 U.S. 630, 643-44 (1993) (citation omitted). This rigorous standard applies even when the government employs such classifications for “benign” reasons. *Bush v. Vera*, 517 U.S. 952, 984 (1996). Ultimately, it is the government that bears the burden to prove “that the reasons for any [racial or ethnic] classification [are] clearly identified and unquestionably legitimate.” *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 505 (1989).

Indeed, UMN cannot demonstrate that the MSROP serves any legitimate governmental purpose, let alone an extraordinary one. Classifications based on immutable characteristics like skin color and national origin “are so seldom relevant to the achievement of any legitimate state interest” that government policies “grounded in such considerations are deemed to reflect prejudice and antipathy – a view that those in the burdened class are not as worthy or deserving as others.” *City of Cleburne*, 473 U.S. at 440.

The Supreme Court has recognized only two interests compelling enough to justify racial classifications. The first is remedying the effects of past de jure segregation or discrimination in the specific industry and locality at issue in which the government played a role,¹¹ and the second is “the attainment of a diverse student body.” *Parents Involved in Cmty. Sch.*, 551 U.S. at 720-22.¹² Neither applies here.

In its “Diversity, Equity, and Inclusion Statement” posted on the UMN website, the UMN’s Office of Undergraduate Research declares that the program is offered to “combat systematic racism” and “inequalities faced by the Black, Indigenous, People of Color (BIPOC), and other underrepresented communities ... in the hopes of creating a more dynamic and inclusive world.”¹³ To that end, the UMN Office of Undergraduate Research “acknowledge[es] the history of research and its role in contributing directly and indirectly to the systematic racism

¹¹ The bar to satisfy this criterion “is a high one.” *Vitolo v. Guzman*, 999 F.3d 353 (6th Cir. 2021). *First*, the policy must target a specific episode of past discrimination; it cannot rest on a “generalized assertion that there has been past discrimination in an entire industry.” *J.A. Croson Co.*, 488 U.S. at 498. *Second*, there must be evidence of intentional discrimination in the past – “[s]tatistical disparities don’t cut it.” *Id.* *Third*, the government must have had a hand in the past discrimination it now seeks to remedy. “[I]f the government cannot show that it actively or passively participated in this past discrimination, race-based remedial measures violate equal-protection principles.” *Id.*

¹² The continued vitality of the latter category is uncertain and is currently before the U.S. Supreme Court. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 142 S. Ct. 895 (2022); *Students for Fair Admissions, Inc. v. Univ. of N.C.*, 142 S. Ct. 896 (2022).

¹³ <https://ugresearch.umn.edu/about/our-pledge> [https://archive.is/uDKMF] (accessed on May 5, 2023).

and related inequalities we seek to combat today,” and therefore “pledge[s] to ... engage more fully in anti-racist practices.”¹⁴

The UMN’s Office of Undergraduate Research further states that because UMN is a “primarily white institution,” it offers the MSROP, among others, in order to “recruit those from BIPOC communities and other underrepresented groups to participate in [UMN] programs[.]”¹⁵ Insofar as the aim of the MSROP is to achieve racial balance, that is an objective that the Supreme Court has “repeatedly condemned as illegitimate” and “patently unconstitutional.” *Parents Involved in Cmty. Sch.*, 551 U.S. at 726, 730 (“Accepting racial balancing as a compelling state interest would justify the imposition of racial proportionality throughout American society, contrary to our repeated recognition that at the heart of the Constitution’s guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class”) (cleaned up, citation omitted).

Nevertheless, even if the MSROP furthers a compelling interest, it is not narrowly tailored. *Grutter v. Bollinger*, 539 U.S. 306, 334 (2003) (to be to be narrowly tailored, a race-conscious program must be based on “individualized consideration,” and race must be used in a “nonmechanical way”). Here, race is mechanically applied. Applicant must provide their “demographic” information, and if they are not “People of Color” or Native Americans, they are automatically excluded from consideration. To the extent that any individualized consideration exists, it only applies to distinguish between applicants who have first satisfied the threshold racial litmus test.

Further, a policy is not narrowly tailored if it is either overbroad or underinclusive in its use of racial classifications. *J.A. Croson Co.*, 488 U.S. at 506. Because the MSROP applies in undifferentiated fashion to multiple racial groups – according to UMN’s Office for Equity & Diversity, the term “People of Color” is defined as including all “underrepresented groups and new immigrant populations”¹⁶ – it is overbroad and therefore not narrowly tailored. *Id.* (the “gross overinclusiveness” and undifferentiated use of racial classifications suggests that “the racial and ethnic groups favored by the [policy] were added without attention to whether their inclusion was justified”).

Similarly, insofar as UMN has attempted to justify the MSROP on the grounds that it furthers the elimination of “bias within research practices,”¹⁷ the program is underinclusive since

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ <https://diversity.umn.edu/about-oed> [https://archive.is/DpUcl] (accessed on May 5, 2023).

¹⁷ <https://ugresearch.umn.edu/about/our-pledge> [https://archive.is/uDKMF] (accessed on May 5, 2023).

it arbitrarily excludes broad categories of persons who historically may have suffered bias against them in the research environment – for example, bias based on gender or religion – but who may not qualify as “students of color.”

Finally, for a policy to survive narrow-tailoring analysis, the government must show “serious, good faith consideration of workable race-neutral alternatives,” *Grutter*, 539 U.S. at 339, and that “no workable race-neutral alternative” would achieve the purported compelling interest. *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 312 (2013). There is no evidence that any such alternatives were ever contemplated here.

To be sure, Title VI’s implementing regulations provide that a recipient of federal funds may engage in affirmative action where doing so will “overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.” 34 C.F.R. § 100.3(b)(6)(ii). As noted, UMN does not claim that its purpose in restricting the MSROP to “students of color” is to overcome any specifically identified past unlawful discriminatory practices at UMN. But even if it did, UMN would still have to demonstrate that the program satisfies the requirements of strict scrutiny – i.e., that it furthers a compelling interest and is narrowly tailored. That it cannot do.

Because the blatant racial classification utilized by UMN is presumptively invalid, and since UMN cannot show any extraordinary government justification for engaging in such invidious discrimination, the MSROP transgresses Title VI and the Equal Protection Clause of the Fourteenth Amendment.

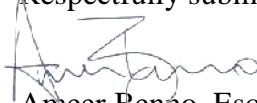
Conclusion

The University of Minnesota is engaging in unlawful discrimination through the Multicultural Summer Research Opportunities Program. Racial discrimination by a public institution is illegal regardless of which race suffers. Discrimination against white applicants is just as unlawful as discrimination against black or other non-white applicants. There is no good form of racial discrimination. Because UMN receives federal funding, OCR had the power and obligation to make UMN stop and to impose whatever remedial relief is necessary.

“The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” *Parents Involved in Cmty. Sch.*, 551 U.S. at 748. OCR should promptly investigate the allegations in this complaint and take the necessary enforcement action to end UMN’s ongoing unlawful policies and practices. This includes, if necessary, imposing fines, initiating administrative proceedings to suspend, terminate, or refuse to grant or continue federal financial assistance, and referring the case to the Department of Justice for judicial proceedings to enforce the rights of the United States under federal law.

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Respectfully submitted,



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