
**THE EQUAL PROTECTION PROJECT**
**A Project of the Legal Insurrection Foundation**
**18 MAPLE AVE. #280**
**BARRINGTON, RI 02806**
**www.EqualProtect.org**

June 24, 2024

**BY EMAIL** (OCR.Chicago@ed.gov)

Adele Rapport
Regional Director
U. S. Department of Education
Office for Civil Rights – Region V
230 S. Dearborn Street, 37th Floor
Chicago, IL 60604

**Re: Civil Rights Complaint Against Indiana University Columbus Regarding Discriminatory Scholarships**

Dear Ms. Rapport:

This is a federal civil rights complaint submitted pursuant to the U.S. Department of Education's Office for Civil Rights ("OCR") discrimination complaint resolution procedures.[1] We write on behalf of the Equal Protection Project of the Legal Insurrection Foundation, a non-profit entity 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.

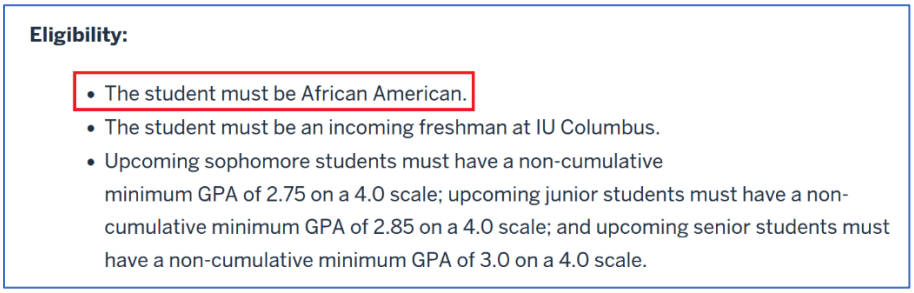
We make this civil rights complaint against Indiana University—Purdue University Columbus, which is changing its name effective next month to Indiana University Columbus

[1] *See* 42 U.S.C. § 2000d-1; 34 C.F.R. §§ 100.7, 100.8, and 100.9.

("IUC"). IUC is a public institution which, in partnership with the African American Fund of Bartholomew County (AAFBC) offers, promotes, and administers the IU Columbus African American Fund Scholarship ("IUC-AA Scholarship")[2] that "will provide a student with $1,000 per year for four years to attend IU Columbus." Eligibility for this scholarship is restricted to African American students, according to the IUC-AA Scholarship website, as shown on the screenshot below:


The IUC-AA Scholarship web page includes a quote from Tom Harmon, president of IUC's partner, the African American Fund of Bartholomew County, stating, "I am pleased that the African American Fund of Bartholomew County and Indiana University Columbus are **partnering to establish** a program to provide **financial and advisory support to African American students** who attend IU Columbus" (emphasis added). The web page for the IUC-AA scholarship, moreover, states that eligibility for this scholarship is restricted to students who are African American, as shown in the screenshot below (highlighting added):

[2] *See*, https://students.iupuc.edu/paying-for-college/scholarships/donor-funded/african-american-fund/index.html.



**Eligibility:**

- The student must be African American.
- The student must be an incoming freshman at IU Columbus.
- Upcoming sophomore students must have a non-cumulative minimum GPA of 2.75 on a 4.0 scale; upcoming junior students must have a non-cumulative minimum GPA of 2.85 on a 4.0 scale; and upcoming senior students must have a non-cumulative minimum GPA of 3.0 on a 4.0 scale.

In other words, students who are not African American are illegally excluded from this scholarship and discriminated against based on their race or color.

**The IUC-AA Scholarship Violates the Law**

IUC violates Title VI by conditioning eligibility for the IUC-AA Scholarship on race. And because IUC is a public institution, its offering and administering of the scholarship also violates the Equal Protection Clause of the Fourteenth Amendment.[3]

Title VI prohibits intentional discrimination on the basis of race, color or national origin in any "program or activity" that receives federal financial assistance. *See* 42 U.S.C. § 2000d. The term "program or activity" means "all of the operations ... of a college, university, or other postsecondary institution, or a public system of higher education." *See* 42 U.S.C. § 2000d-4a(2)(A); *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 universities receiving federal financial assistance). As IUC receives federal funds,[4] it is subject to Title VI.

As you know, in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023), the Supreme Court declared that eliminating racial discrimination "means eliminating all of it …. The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal." *Id*. at 34 (cleaned up). "Distinctions between citizens solely because of their ancestry [including race] are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Id*. at 35.

---

[3] Although your office does not enforce Title II of the Civil Rights Act of 1964, that statute makes it unlawful to discriminate based on race or color in a place of "public accommodation," which IUC is. 42 U.S.C. § 2000(a)(a). The scholarships listed here also violate Indiana's civil rights statute, which makes equal education and equal access to and use of public accommodations enforceable civil rights in the State of Indiana. IC 22-9-1-2. Finally, these scholarships defy IUC's own non-discrimination policy, which according to the IUC website (https://bit.ly/3KWZZtF) incorporates that of Indiana University. *See*, https://bit.ly/3VVdWOY.

[4] *See*, e.g., https://vpur.iu.edu/news-archive/bills/fed06-14-24.html.

It does not matter if a recipient of federal funding discriminates to advance a benign "intention" or "motivation." *Bostock v. Clayton Cty.*, 590 U.S. 644, 661 (2020) ("Intentionally burning down a neighbor's house is arson, even if the perpetrator's ultimate intention (or motivation) is only to improve the view."); *accord Automobile Workers v. Johnson Controls, Inc.*, 499 U.S. 187, 199 (1991) ("the absence of a malevolent motive does not convert a facially discriminatory policy into a neutral policy with a discriminatory effect" or "alter [its] intentionally discriminatory character"). "Nor does it matter if the recipient discriminates against an individual member of a protected class with the idea that doing so might favor the interests of that class as a whole or otherwise promote equality at the group level." *Students for Fair Admissions*, 600 U.S. 289 (Gorsuch, J., concurring).

Simply put, "Title VI prohibits a recipient of federal funds from intentionally treating any individual worse even in part because of his race, color, or national origin and without regard to any other reason or motive the recipient might assert." *Id*. at 290. Thus, regardless of IUC's reasons for sponsoring, promoting and administering these scholarships, it is violating Title VI by doing so.

As noted, because IUC is a public institution, its creation, sponsorship and promotion of discriminatory scholarships also violates the Equal Protection Clause of the Fourteenth Amendment. Any exception to the Constitution's demand for equal protection must survive the "daunting two-step examination known as strict scrutiny," *id*. at 207, and the scholarships at issue here flunk that exacting test.

Under strict scrutiny, suspect classifications "are constitutional only if they are narrowly tailored measures that further compelling governmental interests." *Adarand Constructors v. Pena*, 515 U.S. 200, 227 (1995). The government bears the burden to prove that its reasons for utilizing racial classification are "clearly identified and unquestionably legitimate." *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 505 (1989). Here, the government cannot carry that burden.

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). IUC cannot demonstrate that restricting eligibility for a scholarship to students who identify as "African American/Black" serves any legitimate governmental purpose, let alone an extraordinary one. Classifications based on immutable characteristics such as skin color "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 v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

Indeed, 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**, and the

second is "avoiding imminent and serious risks to human safety in prisons, such as a race riot." *Students for Fair Admissions*, 600 U.S. at 207.[5] Neither applies here.

To the extent the IUC-AA Scholarship is intended to achieve racial balance, such an objective has been "repeatedly condemned as illegitimate" and "patently unconstitutional" by the Supreme Court. *Parents Involved in Cmty. Sch.*, 551 U.S. at 726, 730. And, irrespective of whether the scholarships' classifications based on immutable characteristics further a compelling interest, a race-conscious program must be based on "individualized consideration," and race must be used in a "nonmechanical way." *Grutter v. Bollinger*, 539 U.S. 306, 334 (2003). Here, the race-based eligibility criterion is, by its terms, mechanically applied. If applicants do not meet the blunt racial requirement that they be African Americans, they are not eligible for this scholarship. 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. Indeed, in *Students for Fair Admissions*, the Supreme Court found that such broad categories are "imprecise," "plainly overbroad," "arbitrary," "undefined" and "opaque." *Students for Fair Admissions*, 600 U.S. at 217-218.

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 reason to believe that any such alternatives have been contemplated here.

Because IUC's racial requirement for the IUC-AA Scholarship is presumptively invalid, and because there is no compelling government justification for such invidious discrimination, its use of such a criterion violates state and federal civil rights statutes and constitutional equal protection guarantees.

**OCR Has Jurisdiction**

OCR has jurisdiction over this complaint. IUC is a public institution and a recipient of federal funds. It is therefore liable for violating Title VI and the Equal Protection Clause.

**The Complaint is Timely**

This complaint is timely brought because it includes allegations of discrimination based on race or color that are ongoing.

[5] Until recently, the law recognized a third interest, "the attainment of a diverse student body," *see Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720-22 (2007), but that was substantively overruled by *Students for Fair Admissions, Inc*, 600 U.S. at 233 (2023) (Thomas, J. concurring).

**Request for Investigation and Enforcement**

In *Richmond v. J. A. Croson Co.*, Justice Scalia aptly noted that "discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong and destructive of a democratic society." 488 U.S. at 505. This is true regardless of which race suffers discrimination. Race-based admissions preferences "fly in the face of our colorblind Constitution and our Nation's equality ideal" and "are plainly – and boldly – unconstitutional." *Students for Fair Admissions*, 600 U.S. at 287 (Thomas, J., concurring).

Because the discriminatory scholarship eligibility criterion outlined above is presumptively invalid, and since IUC cannot show any compelling government justification for those restriction, IUC's limitation of scholarships based on race and sex violates federal civil rights statutes and constitutional equal protection guarantees.

The Office for Civil Rights has the power and obligation to investigate IUC's role in creating, supporting and promoting this scholarship and impose whatever remedial relief is necessary to hold it accountable for that unlawful conduct. This includes, if necessary, imposing fines, initiating administrative proceedings to suspend or terminate 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. "The way to stop discrimination," the Supreme Court has taught, "is to stop discriminating[.]" *Parents Involved in Cmty. Sch.*, 551 U.S. at 748.

Accordingly, we respectfully ask that the Department of Education's Office for Civil Rights open a formal investigation, impose such remedial relief as the law permits for the benefit of those who have been illegally excluded from this IUC scholarship based on discriminatory criteria, and ensure that all ongoing and future programming through IUC comports with the Constitution and federal civil rights laws.

Very truly yours,

Ronald D. Coleman
*Director of Litigation*
The Equal Protection Project
ron.coleman@legalinsurrection.com

William A. Jacobson
*President*
Legal Insurrection Foundation
contact@legalinsurrection.com

---

Archived versions of web pages cited in this letter:

- Footnote 2: https://bit.ly/3zawnWW

- Footnote 3: IUC website: https://bit.ly/3RGBsge; Indiana University website: https://bit.ly /3XyUYio
- Footnote 4: https://web.archive.org/web/20240623170108/https://vpur.iu.edu/news-archive/bills/fed06-14-24.html