



**THE EQUAL PROTECTION PROJECT**  
**A Project of the Legal Insurrection Foundation**  
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**BY EMAIL** (OCR.Chicago@ed.gov)

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

**Re: Civil Rights Complaint Against Minnesota State University Moorhead  
Regarding Discriminatory Scholarships**

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.<sup>1</sup> We write on behalf of the Equal Protection Project 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 Minnesota State University Moorhead (“MSUM”), a public institution, for offering, administering and promoting five discriminatory scholarships that restrict eligibility to students based on race, color and national origin. The number and scope of these discriminatory programs reflects a systemic discrimination problem at

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<sup>1</sup> See 42 U.S.C. § 2000d-1; 34 C.F.R. §§ 100.7, 100.8, and 100.9.

MSUM, and we urge OCR to prioritize its review and promptly open an investigation and take action.

These scholarships violate Title VI of the Civil Rights Act of 1964 (“Title VI”) and its implementing regulations.<sup>2</sup> And, because MSUM is a public institution, these discriminatory scholarships also violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

All of these scholarships are being offered during the 2024-25 academic year, although the application period closed on February 1, 2024.<sup>3</sup>

### **1. The Access, Opportunity & Success Scholars Diversity Scholarship**

This scholarship is available to new freshman or new transfer students who are “from an underrepresented or underserved population,” which, according to MSUM, means that they “identify as African American/Black, American Indian/Alaska Native, Asian/Pacific Islander, and Hispanic/Latino.”<sup>4</sup>

**Access, Opportunity & Success Scholars Diversity**

This scholarship is available to new freshman and new transfer students who are seeking their first Bachelor's degree, admitted to MSUM from an underrepresented or underserved population, a US citizen or permanent resident, and demonstrate financial need.

Eligible students identify as African American/Black, American Indian/Alaska Native, Asian/Pacific Islander, and Hispanic/Latino. Preference will be given to students pursuing their first college degree. Financial need is determined through the FAFSA. If you have not completed a FAFSA already, you can do so at [studentaid.gov](https://studentaid.gov).

Students must maintain **satisfactory academic progress** and be registered for at least 12 credits per semester.

No additional requirements are needed.

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<sup>2</sup> 42 U.S.C. § 2000d *et seq.*; 28 C.F.R. Part 100.

<sup>3</sup> *Id.*

<sup>4</sup> See <https://www.mnstate.edu/student-life/diversity-equity-inclusion/scholarships/> [<https://archive.is/tzzMP#>] (accessed on Jun, 2, 2024).

## 2. **The Earl, Violette and Louise Warner Diversity Scholarship**

This Earl, Violette and Louise Warner Diversity Scholarship is exclusively awarded “to students who are of Mexican-American descent,” with preference given to students who were either migrant sugarbeet workers or who are “descendents” [sic] of a migrant sugarbeet worker.<sup>5</sup>

### Earl, Violette and Louise Warner Diversity

This scholarship is awarded to students who are of Mexican-American descent. Preference is given to students who have worked as migrant sugarbeet workers or are descendents of a migrant sugarbeet worker.

No additional requirements are needed.

## 3. **The Joseph Thorman Hispanic Scholarship**

This Joseph Thorman Hispanic Scholarship is awarded only to “full-time, Hispanic students from South Texas.”<sup>6</sup>

### Joseph Thorman Hispanic

This scholarship is awarded to full-time, Hispanic students from South Texas. Students must have a GPA of 3.5 or higher (upperclass) or be in the top 25% of their class (freshmen). Participation in extra-curricular activities is considered.

No additional requirements are needed.

## 4. **The MSUM Diversity Scholarship**

The MSUM Diversity Scholarship is available “to students from an underrepresented or underserved population who identify as African American/Black, American Indian/Alaska Native, Asian/Pacific Islander, and/or Hispanic/Latino and are U.S. Citizens or Permanent Residents.”<sup>7</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

#### MSUM Diversity

This scholarship is available to students from an underrepresented or underserved population who identify as African American/Black, American Indian/Alaska Native, Asian/Pacific Islander, and/or Hispanic/Latino and are U.S. Citizens or Permanent Residents.

This scholarship may be renewed for subsequent semesters, contingent upon funding.

No additional requirements are needed.

#### 5. **The ODI Diversity Scholarship**

To be eligible for the ODI Diversity Scholarship, applicants must be “full-time students from an underrepresented or underserved population who identify as African American/Black, American Indian/Alaska Native, Asian/Pacific Islander, and/or Hispanic/Latino and are U.S. Citizens or Permanent Residents.”<sup>8</sup>

#### ODI Diversity Scholarship

This scholarship is available to full-time students from an underrepresented or underserved population who identify as African American/Black, American Indian/Alaska Native, Asian/Pacific Islander, and/or Hispanic/Latino and are U.S. Citizens or Permanent Residents. Students must maintain at least a 2.00 GPA or higher every semester and can be graduates or undergraduates. This scholarship may be renewed for subsequent semesters, contingent upon funding.

No additional requirements are needed.

#### **The Scholarships Listed Above Violate The Law**

MSUM violates Title VI by conditioning eligibility for the foregoing scholarships on race, national origin and skin color. Because MSUM is a public institution, its offering and administering of the scholarships listed here also violates the Equal Protection Clause of the Fourteenth Amendment.<sup>9</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> Although OCR does not enforce Title II of the Civil Rights Act of 1964, that statute makes it unlawful to discriminate on the basis of race or color in a place of “public accommodation,” such as MSUM. 42 U.S.C. § 2000(a)(a). The scholarships listed here also violate 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). Finally, these scholarships defy MSUM’s own

In *Students for Fair Admissions Inc. v. President & Fellows of Harv. Coll.*, 2023 U.S. LEXIS 2791 (2023), the Supreme Court declared that “[e]liminating 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 [and race] are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.” *Id.* at 35 (citation omitted).

Title VI of the Civil Rights Act 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 MSUM receives federal funds,<sup>10</sup> it is subject to Title VI.

It does not matter if the recipient of federal funding discriminates in order to advance a benign “intention” or “motivation.” *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1742 (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*, 2023 U.S. LEXIS 2791, at \*154 (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 \*170 (cleaned up). Thus, regardless of MSUM’s reasons for sponsoring, promoting and administering these scholarships, it is violating Title VI by doing so.

As noted, because MSUM is a public institution, its creation, sponsorship and promotion of discriminatory scholarships also violates the Equal Protection Clause of the Fourteenth Amendment, and “[a]ny exception to the Constitution’s demand for equal protection must survive a daunting two-step examination known ... as strict scrutiny.” *Id.* at \*34 (internal quotation marks and citation omitted). The scholarships at issue here flunk that exacting test.

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non-discrimination policy. *See* <https://www.mnstate.edu/about/policies-procedures/list/equal-opportunity/> [<https://archive.is/qT5UH>] (accessed on Jun. 4, 2024).

<sup>10</sup> *See* <https://tinyurl.com/2snfsvzv> [<https://archive.is/MNdbN>] (accessed on Jun. 8, 2024).

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). It is the government that bears the burden to prove “that the reasons for any [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 its 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) (citation omitted). Here, MSUM cannot demonstrate that restricting participation in scholarships to students who identify as “African American/Black,” “Asian/Pacific Islander,” “Hispanic/Latino” or “Mexican-American” serves any legitimate governmental purpose, let alone an extraordinary one. Classifications based on immutable characteristics like 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*, 2023 U.S. LEXIS 2791, at \*35 (citation omitted).<sup>11</sup> Neither applies here.

If the scholarships are 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 (“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).

And, irrespective of whether the scholarships’ classifications based on immutable characteristics further a compelling interest, those classifications are not narrowly tailored. *Grutter v. Bollinger*, 539 U.S. 306, 334 (2003) (to be to be narrowly tailored, a race-conscious

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<sup>11</sup> Until recently, a third interest, “the attainment of a diverse student body,” existed, *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*, a fact recognized by Justice Thomas in his concurring opinion. *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at \*149 (Thomas, J. concurring) (“The Court’s opinion rightly makes clear that *Grutter* is, for all intents and purposes, overruled.”)

program must be based on “individualized consideration,” and race must be used in a “nonmechanical way”). Here, the race- and national origin-based eligibility criteria are mechanically applied. If applicants do not meet the racial and ethnic requirements, they are automatically disqualified from eligibility for the scholarships. To the extent that any individualized consideration exists, it only applies to distinguish between applicants who have first satisfied the threshold racial/ethnic 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. Indeed, in *Students for Fair Admissions*, the Supreme Court found that similar categories as those used by MSUM for the above-listed scholarships were “imprecise,” “plainly overbroad,” “arbitrary,” “undefined” and “opaque.” *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at \*47-48,<sup>12</sup> and declared that “it is far from evident ... how assigning students to these ... categories and making admissions decisions based on them furthers the educational benefits that the universities claim to pursue.” *Id.*

Similarly, restrictions that limit students from participating in a scholarship due to race are underinclusive since they are arbitrary and exclude swaths of students who would otherwise qualify.

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.

Because MSUM’s racial and/or ethnicity-based requirements for these scholarships is presumptively invalid, and since there is no compelling government justification for such invidious discrimination, its use of such criteria violates state and federal civil rights statutes and constitutional equal protection guarantees.

### **OCR Has Jurisdiction**

OCR has jurisdiction over this complaint. MSUM 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, color and national origin that appears to be ongoing.

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<sup>12</sup> In his concurrence, Justice Thomas criticizes these categories as being “artificial.” *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at \*134 (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 (citation omitted). This is true regardless of which race suffers – discrimination against white applicants is just as unlawful as discrimination against black or other non-white applicants. As Justice Thomas correctly noted in *Students for Fair Admissions*, 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*, 2023 U.S. LEXIS 2791, at \*150 (Thomas, J., concurring).

Because the discriminatory scholarship eligibility criteria outlined above are presumptively invalid, and since MSUM cannot show any compelling government justification for those restriction, MSUM’s limitation of scholarships on the basis of 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 MSUM’s role in creating, supporting and promoting these scholarships – and, given the amount of them, to discern whether MSUM is engaging in such discrimination in its other activities – and to 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. After all, “[t]he way to stop discrimination ... 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 prioritize and expedite this complaint given the apparent systemic discrimination at MSUM, promptly open a formal investigation, impose such remedial relief as the law permits for the benefit of those who have been illegally excluded from these MSUM scholarships based on discriminatory criteria, and ensure that all ongoing and future programming through MSUM comports with the Constitution and federal civil rights laws.

Sincerely,

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Legal Insurrection Foundation  
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