



**THE EQUAL PROTECTION PROJECT**  
**A Project of the Legal Insurrection Foundation**  
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April 18, 2023

**BY EMAIL** (attorney.general@ago.mo.gov)

Attorney General Andrew Bailey  
Missouri Attorney General's Office  
Supreme Court Building  
207 W. High St.  
P.O. Box 899  
Jefferson City, MO 65102

**Re: Discrimination Complaint Against Missouri State University Concerning Program Excluding White Males**

Dear Attorney General Bailey:

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 request that your office commence an investigation into and take enforcement action against Missouri State University (“MSU”) for a program that openly discriminates against white males.

MSU is engaging in racial- and gender-based discrimination through its sponsorship, promotion and hosting of a small business training “boot camp” that limits participation to individuals who identify as “BIPOC” – an acronym for non-white “Black, Indigenous and

Persons of Color”<sup>1</sup> – or who are female. White males, and white males alone, are excluded from eligibility. As this program is racially and gender exclusionary, it violates a variety of state and federal civil rights laws, as well as state and federal constitutional prohibitions on race- and gender-based discrimination.

We call on the Office of the Attorney General, which is charged with enforcing anti-discrimination laws in Missouri, to investigate this program, take all appropriate action to end such discriminatory practices, and impose remedial relief.

### **The BIPOC/Female “Boot Camp” – White Males Need Not Apply**

In 2013, MSU created a technology-focused business incubator and entrepreneurial development center called “efactory.”<sup>2</sup> In 2022, the U.S. Bank Foundation awarded \$30,000 to the Missouri State University Foundation for the efactory and Missouri Small Business Development Center (“SBDC”) at MSU to develop an early-stage business training program – or “boot camp” – for “diverse and women-owned businesses.”<sup>3</sup> In addition to the money from the U.S. Bank Foundation, the Missouri Scholarship & Loan Foundation, a non-profit formed by MOHELA,<sup>4</sup> also funded the boot camp program.<sup>5</sup>

According to efactory’s website, the business boot camp would allow for 10 “local BIPOC and women-owned businesses” to take part in an early-stage business training program at no charge.<sup>6</sup> Businesses owned by white males are not eligible.

On Nov. 29, 2022, efactory announced on its website that it was accepting applications for the Spring 2023 boot camp, that applications could be submitted until Dec. 31, 2022, and that

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<sup>1</sup> A document uploaded to the webpage for MSU’s Division of Diversity, Equity and Inclusion and pertaining to MSU’s 2023 Collaborative Diversity Conference defines “BIPOC” as “[a]n acronym representing Black, Indigenous and People of Color, intended to be inclusive and recognize both similarities and differences in experiences of being non-White groups in the United States under colonialism.” See <https://diversity.missouristate.edu/Conference/Files/2022-CDC-MODDC-African-American-School-to-Prison-Pipeline-Final-Report.pdf> [https://archive.is/fDqCq] (accessed on April 17, 2023).

<sup>2</sup> <https://efactory.missouristate.edu/about/> [https://archive.is/V36Dc] (accessed on April 14, 2023).

<sup>3</sup> <https://tinyurl.com/42c9jvyh> (accessed on April 14, 2023).

<sup>4</sup> <https://www.moslf.org/aboutUS.aspx> [https://archive.is/diB0O] (accessed on April 14, 2023).

<sup>5</sup> <https://tinyurl.com/35r6wtfa> (accessed on April 14, 2023).

<sup>6</sup> <https://tinyurl.com/42c9jvyh> (accessed on April 14, 2023).

those who were selected to participate in the program would be notified by late January 2023.<sup>7</sup> The webpage identified the boot camp as “a program of efactory and Missouri SBDC at MSU”<sup>8</sup> and stated:

“This program is for aspiring or current BIPOC and/or women small business owners who have recently started or are in the idea phase. Participants must be living in southern Missouri and must be able to attend all eight program sessions. 10 participants will be selected to participate in the program and will receive a \$3,000 stipend towards transportation, childcare or business expenses.”<sup>9</sup>

The webpage provided that the boot camp would meet one day a week for eight weeks at the efactory, commencing on Feb. 21, 2023 and ending on April 18, 2023.<sup>10</sup>

As shown in the screenshot below, the application itself stated that eligibility in the boot camp was restricted to “BIPOC or women future or current business owner[s] (recently started or in the idea phase)” who are “[l]iving in southern Missouri.”<sup>11</sup>

**Eligibility for Spring 2023**

- BIPOC or women future or current business owner (recently started or in the idea phase)
- Living in southern Missouri
- Must be able to attend all meetings on Tuesdays from 5:00 pm – 7:30 pm at the efactory (starting on February 21, skipping March 14)

The application also required that all applicants identify their ethnicity and gender and, as depicted below, that they “certify” that they were “a BIPOC or woman.”

By selecting Yes, I certify I am a BIPOC or woman founder located in southern Missouri and I commit to attending all training sessions if I am selected for the program. I understand that failure to attend all training sessions will forfeit the program stipend.\*

Yes

No

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<sup>7</sup> <https://efactory.missouristate.edu/blog/2022/11/29/applications-available-for-spring-2023-early-stage-business-boot-camp-and-3000-stipend/> [https://archive.is/vciE2] (accessed on April 14, 2023).

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

<sup>9</sup> *Id.*

<sup>10</sup> <https://web.archive.org/web/20230130214907/https://efactory.missouristate.edu/early-stage-boot-camp/> (accessed on April 14, 2023).

<sup>11</sup> *Id.*

Although the last class of the current boot camp is April 18, 2023, it appears that the course is part of broader programming through MSU's efactory and SBDC that discriminates on the basis of race. For example, those arms of MSU recently partnered with other organizations to provide multiple rounds of \$5,000 grants, no-cost business training and free one-on-one assistance to business owners who identified as BIPOC – business owners who were white were not eligible to participate.<sup>12</sup>

### **The BIPOC/Female “Boot Camp” Violates The Law**

MSU's discrimination against white males clearly violates the Missouri Human Right Act (“MHRA”). *See* Mo. Rev. Stat. § 213.010 *et seq.* The MHRA provides that “[i]t is an unlawful discriminatory practice for any person, directly or indirectly, to refuse, withhold from or deny any other person, or to attempt to refuse, withhold from or deny any other person, any of the accommodations, advantages, facilities, services, or privileges made available in any place of public accommodation ... or to segregate or discriminate against any such person in the use thereof because of race, color, religion, national origin, sex, ancestry, or disability.” Mo. Rev. Stat. § 213.065(2).<sup>13</sup> And, the MHRA also prohibits the state and its political subdivisions – such as MSU and its affiliates – from “discriminat[ing] on the basis of race, color [or] ... sex[.]” Mo. Rev. Stat. § 213.070(1)(3).

Needless to say, the boot camp also violates federal statutory civil rights protections. It violates Title VI of the Civil Rights Act of 1964 for a recipient of federal money, such as MSU, to discriminate on the basis of race, color or national origin.<sup>14</sup> *See* 42 U.S.C. § 2000d. Similarly, discrimination based on gender in education programs or activities that receive federal financial assistance transgresses Title IX of the Education Amendments of 1972. *See* 20 U.S.C. § 1681(a). And, Title II of the Civil Rights Act of 1964 makes it unlawful for a place of “public accommodation,” such as MSU, its efactory and its SBDC, to discriminate on the basis of race or

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<sup>12</sup> <https://efactory.missouristate.edu/blog/2022/04/16/ascend-grant-bipoc-springfield/> [https://archive.is/F9r9Y] (accessed on April 18, 2023). This program is called ASCEND – an acronym for Advancing Springfield's Commitment to Entrepreneurship, Networking & Diversity. *See* <https://efactory.missouristate.edu/blog/2022/09/29/ascend-grant/> [https://archive.is/Jn9wA] (accessed on April 18, 2023).

<sup>13</sup> MSU and its branches, such as efactory and the SBDC, are recognized as places of public accommodation under Missouri law. *See* Mo. Rev. Stat. § 213.010(16)(e) (a place of public accommodation includes “[a]ny public facility owned, operated, or managed by or on behalf of this state or any agency or subdivision thereof, or any public corporation; and any such facility supported in whole or in part by public funds”); *see also* *R.M.A. ex rel. Appleberry v. Blue Springs R-IV Sch. Dist.*, 568 S.W.3d 420, 430 (Mo. 2019) (en banc).

<sup>14</sup> The federal budget for FY 2023 included tens of millions of dollars in funding to MSU. *See* <https://news.missouristate.edu/2023/01/18/23federal-budget/> [https://archive.is/OLehN] (accessed on April 16, 2023); <https://www.umsystem.edu/sites/default/files/media/fa/budget/fy2023-operating-budget-book.pdf> [https://archive.is/CEJym] (accessed on April 16, 2023).

ethnicity. *See* 42 U.S.C. § 2000a(a). As the Early-Stage Business Boot Camp restricts eligibility based on race, color, national origin and gender, it violates all of these statutes.

Further, government-run programs – such as MSU’s efactory and SBDC – that deliberately discriminate on the basis of protected characteristics such as race, color, national origin and gender not only violate state and federal civil rights statutes but also the equal protection guarantees of the Missouri and United States Constitutions.<sup>15</sup>

To be sure, race- and ethnicity-based classifications can be upheld if they can withstand strict scrutiny.<sup>16</sup> That is not the case here, however. Under strict scrutiny, suspect classifications “are constitutional only if they are narrowly tailored measures that further compelling governmental interests.” *Adarand Constructors v. Peña*, 515 U.S. 200, 227 (1995). 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 of proving “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, MSU cannot demonstrate that limiting eligibility to the boot camp to BIPOC business owners 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

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<sup>15</sup> The boot camp also defies MSU’s own non-discrimination policy. *See* Policy G7.02-2, [https://www.missouristate.edu/Policy/Chapter7/G7\\_02\\_2\\_UniversityPolicies.htm](https://www.missouristate.edu/Policy/Chapter7/G7_02_2_UniversityPolicies.htm) [<https://archive.is/slbjO>] (accessed on April 16, 2023).

<sup>16</sup> While classifications based on gender are subject to intermediate scrutiny, *United States v. Virginia*, 518 U.S. 515, 533 (1996), where such discrimination is intentional, the classifications will typically be deemed unlawful because the government cannot demonstrate the “exceedingly persuasive justification” that is required. *Id.* at 524; *Miss. Univ. for Women v. Hogan*, 458 U.S. 718 (1982). Here, the gender discrimination is intentional, and no justification, let alone an exceedingly persuasive one, exists for permitting white women, but not white men, to participate in the business boot camp.

role,<sup>17</sup> and the second is “the attainment of a diverse student body.” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720-22 (2007).<sup>18</sup> Neither applies here.

Moreover, the aim of MSU’s boot camp appears to be to achieve racial and gender balance – a Dec. 2, 2022 article in the Springfield Daily Citizen states that “[t]he program is built for underrepresented founders, such as business owners who are women or people of color”<sup>19</sup> – 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 boot camp 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 considerations,” and race must be used in a “nonmechanical way”). Here, the racial factor is mechanically applied. If a male applicant is not BIPOC, he is 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.

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.

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<sup>17</sup> 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.*

<sup>18</sup> 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).

<sup>19</sup> <https://sgfcitizen.org/news/aspiring-or-current-entrepreneurs-in-ozarks-have-chance-at-3k-from-local-boot-camp/> [https://archive.is/pCSXa] (accessed on April 13, 2023).

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### **Request For Investigation And Enforcement**

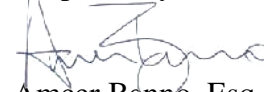
Because the exclusion by MSU of white males in the business boot camp is presumptively invalid, and since MSU cannot show any extraordinary government justification for engaging in such invidious discrimination, the program appears to violate state and federal civil rights statutes and constitutional equal protection guarantees.

It is well established that each State's "interest[ ] in the health and well-being of its residents" includes "securing residents from the harmful effects of discrimination," *Alfred L. Snapp & Son, Inc. v. P.R. ex rel. Barez*, 458 U.S. 592, 609 (1982). MSU, through its efactory and SBDC affiliates, has engaged in unlawful discrimination through its Early-Stage Business Boot Camp. Racial and gender discrimination by a public entity is illegal regardless of which race or gender suffers.

As the state's chief legal officer, you have the power (a) to compel MSU stop such discriminatory practices, (b) to impose remedial relief as the law permits for the benefit of those who have been illegally excluded from the boot camp for discriminatory reasons, and (c) to ensure that all ongoing and future programming through MSU and its affiliates comports with the Constitution and state and federal civil rights laws.

We appreciate your attention to this important matter.

Respectfully submitted,



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