THE EQUAL PROTECTION PROJECT
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BY EMAIL (OCR.KansasCity@ed.gov)

U. S. Department of Education
Office for Civil Rights - Kansas City Office
One Petticoat Lane
1010 Walnut Street, Suite 320
Kansas City, MO 64106

Re: Amended Civil Rights Complaint Against Kansas State University For Its Racially Discriminatory "Joey Lee Garmon Undergraduate Multicultural Student Scholarship"

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 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 Kansas State University ("K-State"), a public institution, for creating, promoting and awarding a racially discriminatory scholarship called the Joey Lee Garmon Undergraduate Multicultural Student Scholarship ("Garmon Multicultural Scholarship").

K-State's creation, ongoing sponsorship and active promotion of a scholarship for which eligibility depends on ethnicity and race violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution as well as Title VI of the Civil Rights Act of 1964 ("Title VI") and its implementing regulations. *See* 42 U.S.C. § 2000d et seq.; 28 C.F.R. Part 100; *see also Gratz v. Bollinger*, 539 U.S. 244, 276 n.23 (2003) ("We have explained that discrimination that violates the Equal Protection Clause of the Fourteenth Amendment committed by an institution that accepts federal funds also constitutes a violation of Title VI.").

The unlawfulness of such racial preferences was confirmed recently by the United States Supreme Court in *Students for Fair Admissions Inc. v. President & Fellows of Harv. Coll.*, 2023 U.S. LEXIS 2791 (2023). There, the 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).

OCR should investigate K-State's blatantly discriminatory Garmon Multicultural Scholarship and the circumstances under which it was approved, take all appropriate action to end such discriminatory practices and impose remedial relief. 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 Joey Lee Garmon Undergraduate Multicultural Student Scholarship

According to the K-State website, the Garmon Multicultural Scholarship is named after Joey Lee Garmon – an African American male who was "unable to find sensitive nurturing of his cultural identity" in a "predominantly European American community."[1] Due to this "desperate and hopeless situation," Garmon "gave up on himself and turned to drugs," and eventually committed suicide in 1972 at the age of 24.[2]

The Garmon Multicultural Scholarship provides $700 to currently enrolled, fulltime undergraduate K-State students "of historically underrepresented backgrounds."[3] To be eligible, applicants therefore "**must** be of an ethnic group that has been historically and traditionally

[1] *See* https://www.k-state.edu/diversity/about/joeyleegarmon.html [https://archive.is/B0VwY] (accessed on Aug. 15, 2023).

[2] *Id*.

[3] *Id*.

oppressed in the achievement of academic and leadership endeavors," with special preference given to "applicants of African American, American Indian, Asian American, and Latinx American heritage" (emphasis added).[4]

Joey Lee Garmon Scholarship

Joey Lee Garmon, an African American male, was born August 20, 1947, in a predominately European American community. In this setting, it was not uncommon to have teachers and students engage in racial abuses in the classroom. When a person from a different racial/ethnic background walked down the street, he/she was often met with racial harassment. In addition, there was overt discrimination in seeking employment as a person of color.

Within this community, Joey Lee Garmon was unable to find sensitive nurturing of his cultural identity in either the school system or in the community. Like so many young people in desperate and hopeless situations, Joey Lee Garmon gave up on himself and turned to drugs. On August 30, 1972, at the age of 24, he committed suicide.

There are two different scholarships available. The **Joey Lee Garmon Undergraduate Multicultural Student Scholarship** is directed towards students of historically underrepresented backgrounds. The applicant must be of an ethnic group that has been historically and traditionally oppressed in the achievement of academic and leadership endeavors to include applicants of African American, American Indian, Asian American, and Latinx American heritage. The **Undergraduate Social Justice Scholarship** can be awarded to any student of any background with a strong record of social justice activism.

Diversity and Multicultural Student Affairs will give out **5 scholarships total**; 3 Multicultural Student Scholarships and 2 Social Justice Scholarships. Scholarship recipients will each receive $700.

The deadline date for applications is Friday, October 6th, 2023.[5] The selection of the scholarship recipients will made by "a committee of university representatives," and the scholarship will be awarded for the spring 2024 semester.[6]

[4] *Id.*

[5] *Id.*

[6] *See* https://tinyurl.com/43kw6xmu [https://archive.is/d6E8s] (accessed on Aug. 15, 2023)

Selection and Time Line	The recipient will be chosen by a scholarship committee of university representatives. The applicants will be informed by email of the award selection. The scholarship will be awarded for spring semester and the check will be made to Kansas State University for a tuition stipend.

The centrality of race and ethnicity to K-State's selection of the Garmon Multicultural Scholarship recipients is apparent. K-State offers a separate award called the Joey Lee Garmon Undergraduate Social Justice Scholarship ("Garmon Social Justice Scholarship") "to one undergraduate of **any background** who demonstrates exemplary efforts to advance social justice" (emphasis added).[7] The pertinent sections of the Garmon Social Justice Scholarship's informational flyer are reproduced below:

The Joey Lee Garmon Undergraduate Scholarship for Social Justice

Deadline Date for Application: Friday, Oct. 6th, 2023 by 5:00 p.m.

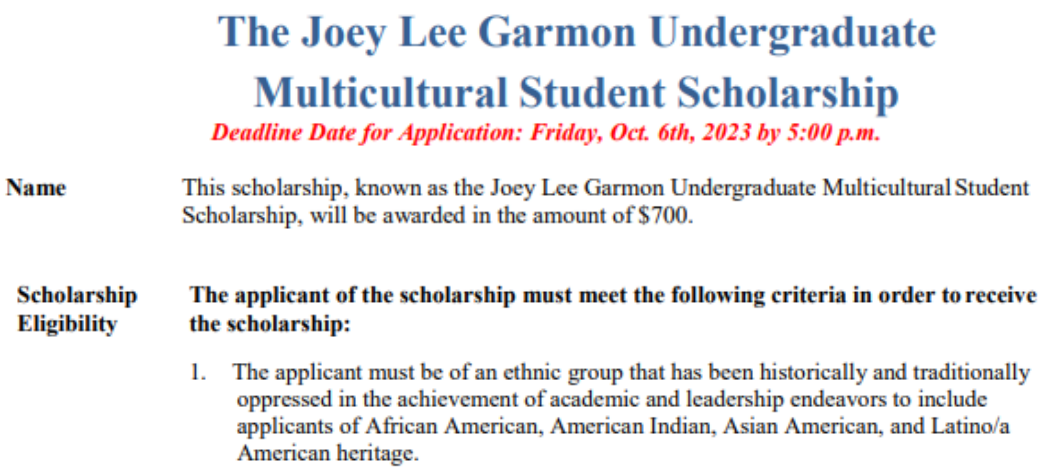
Name	This scholarship, known as the Undergraduate Scholarship for Social Justice, will be awarded in the amount of $700 to **one** undergraduate of any background who demonstrates exemplary efforts to advance social justice.
Scholarship Eligibility	**The applicant of the scholarship must meet the following criteria in order to receive the scholarship:** 1. The applicant must be an undergraduate of any background with a strong record of social justice activism.

The Garmon Multicultural Scholarship eliminates the "any background" language and adds racially restrictive criteria.[8] Unlike the Garmon Social Justice Scholarship, the Garmon Multicultural Scholarship will only be awarded to applicants who are "of an ethnic group that has been historically and traditionally oppressed in the achievement of academic and leadership endeavors to include applicants of African American, American Indian, Asian American, and Latino/a American heritage."[9] A screenshot of the relevant portions of the Garmon Multicultural Scholarship informational flyer is reproduced below:

[7] *See* https://www.k-state.edu/diversity/about/joeyleegarmon.html [https://archive.is/B0VwY] (accessed on Aug. 15, 2023).

[8] *See* https://tinyurl.com/43kw6xmu [https://archive.is/d6E8s] (accessed on Aug. 15, 2023).

[9] *Id*.



The Joey Lee Garmon Undergraduate Multicultural Student Scholarship

Deadline Date for Application: Friday, Oct. 6th, 2023 by 5:00 p.m.

Name This scholarship, known as the Joey Lee Garmon Undergraduate Multicultural Student Scholarship, will be awarded in the amount of $700.

Scholarship Eligibility **The applicant of the scholarship must meet the following criteria in order to receive the scholarship:**

1. The applicant must be of an ethnic group that has been historically and traditionally oppressed in the achievement of academic and leadership endeavors to include applicants of African American, American Indian, Asian American, and Latino/a American heritage.

The Garmon Multicultural Scholarship Violates The Law

It violates Title VI for a recipient of federal money to create, support and promote a racially segregated program. When a public institution does so, such conduct also violates the Equal Protection Clause of the Fourteenth Amendment.[10]

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 K-State receives federal funds, it is subject to Title VI.[11]

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]

[10] 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 K-State. 42 U.S.C. § 2000(a)(a). Similarly, the Garmon Multicultural Scholarship defies K-State's own non-discrimination policy. *See* https://tinyurl.com/29s7fuw9 [https://archive.is/3vNKN] (accessed on Aug. 15, 2023).

[11] *See* https://www.k-state.edu/sfa/about/policies/crrsaa/heerf.html [https://archive.is/K0Q9z] (accessed on Aug. 15, 2023).

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).[12]

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 K-State's reasons for employing racial and ethnic preferences in selecting the recipients of the Garmon Multicultural Scholarship, it violated Title VI by doing so.

And, because K-State is a public institution, its introduction of invidious discrimination into the scholarship eligibility criteria violates the Equal Protection clause of the Fourteenth Amendment.

The inclusion of racial criteria in the promotional materials about the scholarship undoubtedly deters students of other races and ethnicities from applying for it. That, in itself, violates the law. "When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group," the constitutional harm is "the imposition of the barrier, not the ultimate inability to obtain the benefit." *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993). The scholarship's racial litmus test is patently discriminatory.

"Any 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 Garmon Multicultural Scholarship flunks 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). 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, K-State cannot demonstrate that imposing racial and ethnic restrictions on the Garmon Multicultural Scholarship furthers 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

[12] While *Students for Fair Admissions* condemned the use of racial preferences in college admissions, the broad principles of that case apply with equal force to the use of racial preferences in this context as well.

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).[13] Neither applies here.

To the extent that the purpose of the Garmon Multicultural Scholarship is to increase the numbers of "African American, American Indian, Asian American, and Latinx American" students in "academic and leadership endeavors,"[14] achieving such racial balance 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).

And, irrespective of whether the Garmon Multicultural Scholarship 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, the racial criterion is mechanically applied. If applicants do not belong to "an ethnic group that has been historically and traditionally oppressed in the achievement of academic and leadership endeavors," such as those "of African American, American Indian, Asian American, and Latinx American heritage,"[15] they are automatically ineligible for the scholarship. To the extent that any individualized consideration exists, it only applies to distinguish between applicants who have first satisfied the threshold ethnic/racial litmus test.

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[13] 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.").

[14] *See* https://www.k-state.edu/diversity/about/joeyleegarmon.html [https://archive.is/B0VwY] (accessed on Aug. 15, 2023).

[15] *Id.*

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 "historically and traditionally oppressed" eligibility requirement for the Garmon Multicultural Scholarship applies in an undifferentiated fashion to multiple ethnic groups, 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").

Indeed, In *Students for Fair Admissions*, the Supreme Court found that similar racial and ethnic categories were "imprecise," "plainly overbroad," "arbitrary," "undefined" and "opaque." *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at *47-48,[16] and declared that "it is far from evident …how assigning students to these racial categories and making admissions decisions based on them furthers the educational benefits that the universities claim to pursue." *Id*.

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 K-State's ethno-racial eligibility criteria for the Garmon Multicultural Scholarship is presumptively invalid, and since there is no extraordinary government justification for such invidious discrimination, K-State's use of those requirements violates state and federal civil rights statutes and constitutional equal protection guarantees.

OCR Has Jurisdiction

OCR has jurisdiction over this complaint. K-State is a public institution and a recipient of federal funds.[17] It therefore is liable for violating Title VI and the Equal Protection Clause.

[16] In his concurrence, Justice Thomas criticized these categories as being "artificial." *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at *134 (Thomas, J., concurring).

[17] *See* https://www.k-state.edu/sfa/about/policies/crrsaa/heerf.html [https://archive.is/K0Q9z] (accessed on Aug. 15, 2023).

The Complaint Is Timely

This complaint is timely brought because it includes allegations of discrimination based on race and national origin that occurred within the last 180 days.

Request For Investigation And Enforcement

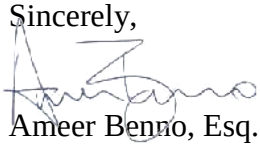
In *Richmond v. J. A. Croson Co.*, Justice Scalia aptly noted that "discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong and destructive of a democratic society." 488 U.S. at 505 (citation omitted). This is true regardless of which race suffers – discrimination 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 awarding scholarships on the basis of race and ethnicity – with special preference given to "applicants of African American, American Indian, Asian American, and Latinx American heritage" – is presumptively invalid, and since K-State cannot show any extraordinary government justification for such invidious discrimination, its conduct violates federal civil rights statutes and constitutional equal protection guarantees.

The Office for Civil Rights has the power and obligation to investigate K-State's role in creating, sponsoring, supporting and promoting Garmon Multicultural Scholarship – and to discern whether K-State is engaging in such discrimination in their other activities – and to impose whatever remedial relief is necessary to hold the school accountable for its 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 on the basis of race is to stop discriminating on the basis of race." *Parents Involved in Cmty. Sch.*, 551 U.S. at 748.

Accordingly, we respectfully ask that the Department of Education's Office for Civil Rights impose remedial relief as the law permits for the benefit of those who have been illegally excluded from the Garmon Multicultural Scholarship based on discriminatory criteria, and that it ensures that all ongoing and future programming through K-State comports with the Constitution and federal civil rights laws.

Sincerely,



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