



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

Kansas City Office
Office for Civil Rights
U.S. Department of Education
One Petticoat Lane
1010 Walnut Street, 3rd floor, Suite 320
Kansas City, MO 64106

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

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 Missouri State University ("MSU"), a public institution, for engaging in racial- and gender-based discrimination through its sponsorship, promotion and hosting of a small business training "boot camp" that limited

participation to individuals who identify as “BIPOC” – an acronym for non-white individuals who are “Black, Indigenous and Persons of Color”¹ – or who are female. White males, and white males alone, were excluded from eligibility.

As this program was racially and gender exclusionary, it violated Title VI of the Civil Rights Act of 1964 (“Title VI”) and its implementing regulations² as well as Title IX of the Education Amendments of 1972 (“Title IX”), and its implementing regulations.³ And, because the University of Missouri is a public institution, the segregated program also violated the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.⁴

The OCR should investigate this program and the circumstances under which such a blatantly discriminatory program 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 BIPOC/Female “Boot Camp” – White Males Need Not Apply

In 2013, MSU created a technology-focused business incubator and entrepreneurial development center called “efactory.”⁵ In 2022, the U.S. Bank Foundation awarded \$30,000 to

¹ 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).

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

³ 20 U.S.C. §1681 *et seq.*; 34 C.F.R. Part 106.

⁴ The boot camp also ran afoul of Missouri’s Human Rights 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). 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).

⁵ <https://efactory.missouristate.edu/about/> [https://archive.is/V36Dc] (accessed on April 14, 2023).

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.”⁶ In addition to the money from the U.S. Bank Foundation, the Missouri Scholarship & Loan Foundation, a non-profit formed by MOHELA,⁷ also funded the boot camp program.⁸

According to efactory’s website, the business boot camp allowed for 10 “local BIPOC and women-owned businesses” to take part in an early-stage business training program at no charge.⁹ Businesses owned by white males were 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 those who were selected to participate in the program would be notified by late January 2023.¹⁰ The webpage identified the boot camp as “a program of efactory and Missouri SBDC at MSU”¹¹ 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.”¹²

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, 2023.¹³

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

⁷ <https://www.moslf.org/aboutUS.aspx> [https://archive.is/diB0O] (accessed on April 14, 2023).

⁸ <https://tinyurl.com/35r6wtfa> (accessed on April 14, 2023).

⁹ <https://tinyurl.com/42c9jvyh> (accessed on April 14, 2023).

¹⁰ <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).

¹¹ *Id.*

¹² *Id.*

¹³ <https://web.archive.org/web/20230130214907/https://efactory.missouristate.edu/early-stage-boot-camp/> (accessed on April 14, 2023).

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.”¹⁴

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

It appears that the course was 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.¹⁵ Accordingly, it is critical that the OCR investigate all of MSU’s ongoing and planned future programming to ensure that it comports with the Constitution and federal civil rights laws.

OCR Has Jurisdiction

OCR has jurisdiction over this complaint.

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. 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.” 42 U.S.C. § 2000d-4a(2)(A). *See Rowles v. Curators of the Univ. of Mo.*, 983 F.3d 345, 355 (8th Cir. 2020)

¹⁴ *Id.*

¹⁵ <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).

(“Title VI prohibits discrimination on the basis of race in federally funded programs,” and thus applies to public universities receiving federal financial assistance).

Similarly, discrimination based on sex in “education program[s] or activit[ies]” that receive federal financial assistance transgresses Title IX. *See* 20 U.S.C. §1681(a). The term “education program or activity” is defined expansively and “provides relief broadly to those who face discrimination on the basis of sex in the American education system.” *Doe v. Univ. of Ky.*, 971 F.3d 553, 557 (6th Cir. 2020) (citing *NCAA v. Smith*, 525 U.S. 459, 466 n.4 (1999)).

MSU receives federal funding. Indeed, MSU’s proposed operating budget for Fiscal Year 2023 provides that UMN will receive nearly \$28 million in federal appropriations alone, not taking into account funds from federal Pell grants, CARES Act funding, and other federal grants and contracts.¹⁶ Accordingly, MSU is subject to both Title VI and Title IX.

Moreover, where a public university engages in discrimination by expressly classifying persons on the basis of race or gender, it violates the Equal Protection Clause of the U.S. Constitution. *Hayden v. County of Nassau*, 180 F.3d 42, 48 (2d Cir. 1999) (citing *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 213, 227-29, (1995)).

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 BIPOC/Female “Boot Camp” Violated The Law

As noted, it violates Title VI for a recipient of federal money, such as MSU, to discriminate on the basis of race, color or national origin.¹⁷ *See* 42 U.S.C. § 2000d. Similarly, MSU’s gender-based discrimination violates Title IX. *See* 20 U.S.C. §1681(a). 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

¹⁶ <https://www.umsystem.edu/sites/default/files/media/fa/budget/fy2023-operating-budget-book.pdf> [<https://archive.is/9OS7t>] (accessed on May 22, 2023).

¹⁷ 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.i/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).

violate federal civil rights statutes but also the Fourteenth Amendment’s guarantee of Equal Protection.¹⁸

To be sure, race- and ethnicity-based classifications can be upheld if they can withstand strict scrutiny.¹⁹ 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 served 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,²⁰ 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).²¹ Neither applied here.

¹⁸ Further, although OCR does not enforce Title II of the Civil Rights Act of 1964, that statute 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 ethnicity. *See* 42 U.S.C. § 2000a(a). By promoting and hosting the segregated boot camp, MSU has violated that anti-discrimination law, too. It is also worth noting that the boot camp defies MSU’s own non-discrimination policy. *See* Policy G7.02-2, <https://tinyurl.com/2p92mjfn> [<https://archive.is/slbjO>] (accessed on April 16, 2023).

¹⁹ 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 was deliberate, and no justification, let alone an exceedingly persuasive one, existed for permitting white women, but not white men, to participate in the boot camp.

²⁰ 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.

Moreover, the aim of MSU’s boot camp appears to have been to achieve racial and gender balance – a Dec. 2, 2022 article in the Springfield Daily Citizen stated that “[t]he program is built for underrepresented founders, such as business owners who are women or people of color”²² – 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 furthered a compelling interest, it was 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 was mechanically applied. If a male applicant was not BIPOC, he was automatically excluded from consideration. To the extent that any individualized consideration existed, it only applied to distinguish between applicants who 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.

Request For Investigation And Enforcement

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. Because the exclusion by MSU of white males in the business boot camp was presumptively invalid, and since MSU cannot show any extraordinary government

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.*

²¹ 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).

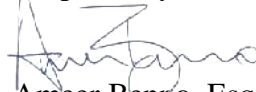
²² <https://sgfcitizen.org/news/aspiring-or-current-entrepreneurs-in-ozarks-have-chance-at-3k-from-local-boot-camp/> [https://archive.is/pCSXa] (accessed on April 13, 2023).

justification for having engaged in such invidious discrimination, the program violated federal civil rights statutes and constitutional equal protection guarantees.

After a Missouri-based news publication and national media outlets publicized the fact that MSU was limiting participation in the boot camp to non-whites and women,²³ the university publicly stated that those discriminatory criteria were used only “on a one-time basis,” and that “[o]n an ongoing basis, the efactory will continue to offer the Early-Stage Business Boot Camp Program at no cost to the participants, and irrespective of their race and/or sex.”²⁴ Nevertheless, given MSU’s history of sponsoring racially discriminatory programs through the efactory and SBDC, the Office for Civil Rights has the power and obligation to investigate whether MSU is engaging in such invidious 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 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 were illegally excluded from the boot camp for discriminatory reasons, and that it ensure that all ongoing and future programming through MSU and its affiliates comports with the Constitution and federal civil rights laws.

Respectfully submitted,



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-And-

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President

²³ This news coverage was precipitated by a letter our organization sent to the Missouri Attorney General, who is charged with enforcing anti-discrimination laws in Missouri, asking him to investigate the boot camp program. To our knowledge, no investigation ensued, and this complaint is not being addressed by any other agency.

²⁴ <https://heartlandernews.com/2023/04/20/missouri-state-university-says-its-no-white-males-allowed-business-boot-camp-was-a-one-off-not-good-enough-says-watchdog/> [https://archive.is/19X5Q] (accessed on June 2, 2023).

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