



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

January 30, 2024

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 Southern Illinois University School Of Medicine Regarding Race- And Sex-Based 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.¹

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 Southern Illinois University School of Medicine (“SIU School of Medicine”), a public institution, for offering and promoting a race- and sexual orientation/gender identity-based scholarship that limits eligibility to students who are

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

“Black or African American, Hispanic/Latinx, Native Americans (American Indian, Native Pacific Islander, Alaskan Native) or Students who identify as LGBTQI+.”² White and non-Pacific Islander Asians students who are heterosexual and whose gender identity aligns with their biological sex (so-called “cisgender”) are excluded from eligibility.

As this scholarship discriminates based on race and sexual orientation/gender identity, it violates Titles VI of the Civil Rights Act of 1964 (“Title VI”) and its implementing regulations³ as well as Title IX of the Education Amendments of 1972 (“Title IX”), and its implementing regulations.⁴ And, because SIU School of Medicine is a public institution, the discriminatory scholarship also violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

The Tracey Meares Representation Matters Scholarship

According to the SIU School of Medicine website, the Tracey Meares Representation Matters Scholarship (“Meares Scholarship”) is a scholarship offered through the medical school’s Institute of Plastic Surgery to promote “the value of diversity and inclusion within the SIU School of Medicine” and “to allow equitable opportunities” for students interested in plastic surgery.⁵

One of SIU School of Medicine’s two campuses is located in Springfield, Illinois.⁶ According to the scholarship’s webpage, Tracey Meares was the number one student in her class at Springfield High School in 1984 – which would have made her the school’s first black female

² See <https://www.siumed.edu/institute-plastic-surgery/tracey-meares-representation-matters-scholarship> [https://web.archive.org/web/20230704170831/https://www.siumed.edu/institute-plastic-surgery/tracey-meares-representation-matters-scholarship] (accessed on Jan. 20, 2024).

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

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

⁵ See <https://www.siumed.edu/institute-plastic-surgery/tracey-meares-representation-matters-scholarship> [https://web.archive.org/web/20230704170831/https://www.siumed.edu/institute-plastic-surgery/tracey-meares-representation-matters-scholarship] (accessed on Jan. 20, 2024).

⁶ See <https://www.siumed.edu/our-campuses> [https://archive.is/AfWbq] (accessed on Jan. 20, 2024).

valedictorian – but was never officially given the title of “valedictorian” until decades later⁷ after a documentary chronicling her story, “No Title for Tracy,” was released.⁸

According to SIU, had Meares been officially recognized as the school’s valedictorian in 1984, she “may have encouraged other marginalized students that they too can strive to be their best academically.”⁹ SIU School of Medicine therefore chose to name a scholarship after Meares “[i]n the spirit of ‘representation matters.’”¹⁰

About Tracey

Tracey Meares was the number one student in her class at Springfield High School in 1984. She was never officially given the title until decades later. She would have been the first black female valedictorian. Her representation as such may have encouraged other marginalized students that they too can strive to be their best academically.

Tracey went on to break barriers by becoming the first tenured black female law professor at the University of Chicago and Yale Law School as well as a foremost authority in her field. Her presence has been an inspiration to others to do the same. In the spirit of “representation matters” and the value of diversity and inclusion within the SIU School of Medicine, this award has been given her name to allow equitable opportunities for students interested in plastic surgery.

To “further honor [Meares’] struggle and journey” and “to promote more diversity in training opportunities in Plastic Surgery,” SIU School of Medicine’s Institute for Plastic Surgery created the Meares Scholarship.¹¹

⁷ See <https://www.siumed.edu/institute-plastic-surgery/tracey-meares-representation-matters-scholarship> [https://web.archive.org/web/20230704170831/https://www.siumed.edu/institute-plastic-surgery/tracey-meares-representation-matters-scholarship] (accessed on Jan. 20, 2024).

⁸ See <https://siusom.scalefunder.com/cfund/project/31820> [https://archive.is/3XtHf] (accessed on Jan. 21, 2024).

⁹ See <https://www.siumed.edu/institute-plastic-surgery/tracey-meares-representation-matters-scholarship> [https://web.archive.org/web/20230704170831/https://www.siumed.edu/institute-plastic-surgery/tracey-meares-representation-matters-scholarship] (accessed on Jan. 20, 2024).

¹⁰ *Id.*

¹¹ See <https://siusom.scalefunder.com/cfund/project/31820> [https://archive.is/3XtHf] (accessed on Jan. 21, 2024).

Tracey Meares Representation Matters Award at SIU Plastic Surgery

The SIU Institute for Plastic Surgery honors the 38-year journey of Tracey Meares' denial of the Valedictorian title she rightfully earned in 1984 at Springfield (IL) High School. In 2022 that wrong was finally corrected when she was officially certified as Valedictorian of her SHS Class of 1984, following the premiere of the documentary chronicling her story entitled, "No Title for Tracey".

To further honor her struggle and journey, the SIU Institute for Plastic Surgery is now offering this \$1,000 Award to visiting medical students from underrepresented populations to promote more diversity in training opportunities in Plastic Surgery.

The scholarship aims “to promot[e] a diverse group of students, residents, and faculty” and “to give students from backgrounds underrepresented in medicine an opportunity to experience firsthand what it would be like to be a plastic surgery resident at SIU School of Medicine.”¹² All recipients of the scholarship “have opportunities to network with faculty and current residents, attend didactic sessions, and play an integrated role on the clinical team in the operating room and clinic arenas,” and one award winner receives a stipend of \$1000 “to offset housing, travel, and incidental costs accrued during a 4-week rotation.”¹³

Scholarship Description:

The Southern Illinois University Institute for Plastic Surgery is committed to promoting a diverse group of students, residents, and faculty. The goal of this scholarship is to give students from backgrounds underrepresented in medicine an opportunity to experience firsthand what it would be like to be a plastic surgery resident at SIU School of Medicine. Visiting students will have opportunities to network with faculty and current residents, attend didactic sessions, and play an integrated role on the clinical team in the operating room and clinic arenas. One award winner will receive a stipend of \$1000 to offset housing, travel, and incidental costs accrued during a 4-week rotation.

Eligibility for the Meares Scholarship is restricted to 4th-year medical students enrolled in accredited medical schools who “[c]ome from a background traditionally underrepresented in medicine.”¹⁴ According to SIU School of Medicine, this means they must be “Black or African American, Hispanic/Latinx, Native Americans (American Indian, Native Pacific Islander, Alaskan Native) or Students who identify as LGBTQI+.”¹⁵ For students from the enumerated racial categories – and only for them – sexual orientation and gender identity is irrelevant to their eligibility for the scholarship award.

¹² See <https://www.siumed.edu/institute-plastic-surgery/tracey-meares-representation-matters-scholarship> [<https://web.archive.org/web/20230704170831/https://www.siumed.edu/institute-plastic-surgery/tracey-meares-representation-matters-scholarship>] (accessed on Jan. 20, 2024).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

Eligibility criteria:

- US citizen or permanent resident
- Current 4th-year medical student enrolled in an LCME-accredited medical school or a COCA osteopathic medical school
- In good academic standing at home institution
- Come from background traditionally underrepresented in medicine: Black or African American, Hispanic/Latinx, Native Americans (American Indian, Native Pacific Islander, Alaskan Native) or Students who identify as LGBTQI+

The Meares Scholarship At SIU School Of Medicine Violates The Law

Because students who do not meet certain prerequisite racial categories – for example, students who identify as white or Asian (non-Pacific Islander) – are automatically ineligible for the Meares Scholarship unless they identify as “LGBTQI+,” the program violates Title VI and Title IX. And since SIU School of Medicine is a public institution, its participation in the scholarship also violates the Equal Protection Clause of the Fourteenth Amendment.¹⁶

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 SIU receives federal funds,¹⁷ it is subject to Title VI.

¹⁶ 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 SIU School of Medicine. 42 U.S.C. § 2000(a)(a). The Meares Scholarship program also violates the Illinois Human Rights Act, which prohibits discrimination based on, among other categories, race, color, sexual orientation and gender-identity. 775 I.L.C.S. 5/1 *et seq.* Finally, the Meares Scholarship defies SIU’s own non-discrimination policy. *See* <http://tinyurl.com/463ha9c8> [https://archive.is/YoDsL] (accessed on Jan. 21, 2024).

¹⁷ *See* <https://news.siu.edu/2023/10/102623-siu-carbondale-research-funds-spike-to-95.7m-in-2022-23.php#:~:text=For%20FY%202023%2C%20which%20ended%20June%2030%2C,of%20Health%20and%20Human%20Services%2C%20the%20National> [https://archive.is/IRlrr] (accessed on Jan. 21, 2024); *see also* <https://newschannel20.com/newsletter-daily/siu-school-of-medicine-to-receive-32-million-in-federal-funding> [https://archive.is/bAYBe] (accessed on Jan. 21, 2024).

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 SIU School of Medicine’s reasons for sponsoring and promoting the Meares Scholarship, it is violating Title VI by doing so.

Likewise, Title IX makes it unlawful to discriminate on the basis of sex in education. That statute provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U. S. C. §1681(a). The Supreme Court has interpreted “sex” discrimination in employment to encompass discrimination on the basis of homosexuality or transgender status. *Bostock*, 140 S. Ct. at 1731. Although *Bostock* involved Title VII, we suggest that OCR has authority to apply that principle here given OCR’s broad mandate to enforce anti-discrimination civil rights statutes in the context of education, such as Title IX. *See Bostock*, 140 S. Ct. at 1778-80 (Alito, J., dissenting) (recognizing that the *Bostock* majority’s decision could affect the interpretation of Title IX “whose terms mirror Title VII’s”); *see also Papelino v. Albany College of Pharm. of Union Univ.*, 633 F.3d 81, 89 (2d Cir. 2011) (Title VII principles apply in interpreting Title IX).

As noted, because SIU is a public institution, its creation, sponsorship and promotion of the Meares Scholarship also violates the Equal Protection Clause of the Fourteenth Amendment.

“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).¹⁸ The scholarship at issue here flunks that exacting test.

¹⁸ Although sex-based discrimination is subject to a “heightened” standard of review, *Sessions v. Morales-Santana*, 582 U. S. 47, 57 (2017); *United States v. Virginia*, 518 U. S. 515, 532-34 (1996), it is less exacting than the strict scrutiny standard applicable to race-based classifications. Under Supreme Court precedent, sex-based classifications by the government require an “exceedingly persuasive justification.” *Virginia*, 518 U. S. at 531. To make this showing, the government must demonstrate “at least that the [challenged] classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” *Id.* at

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). 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, SIU School of Medicine cannot demonstrate that restricting participation in the scholarship program to students who are “Black or African American, Hispanic/Latinx [and] Native Americans” – unless the students “identify as LGBTQI+” – serves any legitimate governmental purpose, let alone an extraordinary one.¹⁹ 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).²⁰ Neither applies here.

To the extent that the requirement that Meares Scholarship recipients “be from backgrounds underrepresented in medicine”²¹ is intended to achieve racial balance, such an objective has been “repeatedly condemned as illegitimate” and “patently unconstitutional” by the

533. The Meares Scholarship falls short of satisfying this standard for the same reasons it fails strict scrutiny. *Virginia*, 518 U. S. at 531.

¹⁹ *Id.*

²⁰ 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.”)

²¹ See <https://www.siumed.edu/institute-plastic-surgery/tracey-meares-representation-matters-scholarship> [<https://web.archive.org/web/20230704170831/https://www.siumed.edu/institute-plastic-surgery/tracey-meares-representation-matters-scholarship>] (accessed on Jan. 20, 2024).

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 Meares 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 race-based eligibility criterion is mechanically applied. If applicants are not “Black or African American, Hispanic/Latinx [or] Native Americans,” they are automatically ineligible for the scholarship unless they “identify as LGBTQI+.” To the extent that any individualized consideration exists, it only applies to distinguish between applicants who have first satisfied the threshold racial 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. Because the race- and ethnicity-based eligibility requirement for the Meares Scholarship applies in an undifferentiated fashion to multiple racial 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 categories as those used by SIU School of Medicine for the Meares Scholarship are “imprecise,” “plainly overbroad,” “arbitrary,” “undefined” and “opaque.” *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at *47-48,²² 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.*

Similarly, the requirement that applicants who are white and Asian (non-Pacific Islander) must identify as “LGBTQI+” to qualify for the Meares Scholarship makes the program underinclusive since that criterion is arbitrary and excludes swaths of students who otherwise fall within those racial categories.

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

²² 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).

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 SIU School of Medicine’s blatant racial preference system for the Meares Scholarship is presumptively invalid, and since there is no compelling government justification for such invidious discrimination, its use of racial preferences violates state and federal civil rights statutes and constitutional equal protection guarantees.

OCR Has Jurisdiction

OCR has jurisdiction over this complaint. SIU 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 and national origin that appears to be ongoing.

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 exclusion of white and non-Pacific Islander Asian applicants from the Meares Scholarship is presumptively invalid, and since SIU cannot show any compelling government justification for such an invidiously discriminatory program, its conduct violates federal civil rights statutes and constitutional equal protection guarantees.

The Office for Civil Rights has the power and obligation to investigate SIU and SIU School of Medicine’s role in creating, supporting and promoting the Meares Scholarship – and to discern whether SIU and SIU School of Medicine are engaging in such discrimination in their other activities – and to impose whatever remedial relief is necessary to hold those institutions 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 the Department of Education's Office for Civil Rights to impose remedial relief as the law permits for the benefit of those who have been illegally excluded from SIU School of Medicine's Meares Scholarship based on racially discriminatory criteria, and to ensure that all ongoing and future programming through SIU and SIU School of Medicine comports with the Constitution and federal civil rights laws.

Sincerely,



Ameer Benno, Esq.
The Equal Protection Project
Ameer@legalinsurrection.com

-And-

William A. Jacobson, Esq.
President
Legal Insurrection Foundation
[Contact@legalinsurrection.com](mailto>Contact@legalinsurrection.com)