



THE EQUAL PROTECTION PROJECT
A Project of the Legal Insurrection Foundation
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February 26, 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 Western Illinois University Regarding Race-
And Sex-Based 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.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 Western Illinois University (“WIU”), a public institution, for offering and promoting sixteen (16) discriminatory scholarships that either restrict eligibility to students who are “African American,” “Black Women,” “Latino,” or students who identify as “LGBTQI+.” or give preference to such students. The number and

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

scope of these discriminatory programs reflects a systemic discrimination problem at WIU, and we urge OCR to prioritize its review and promptly open an investigation and take action.

Those scholarships that discriminate based on race and skin color violate Title VI of the Civil Rights Act of 1964 (“Title VI”) and its implementing regulations.² Those that discriminate on the basis of sex, sexual orientation/gender identity violate Title IX of the Education Amendments of 1972 (“Title IX”) and its implementing regulations.³ And, because WIU is a public institution, all of these discriminatory scholarships violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.


Scholarships That Discriminate By Race, Color and National Origin

1. **President’s Minority Graduate Access Program**: To be eligible for this scholarship, the applicant must be a “minority student.”⁴ The application deadline is March 1, 2024.

President's Minority Graduate Access Program (PMGAP)

THIS SCHOLARSHIP REQUIRES AN EXTERNAL APPLICATION. To apply, please complete the [President's Minority Graduate Access Program Application](#).

CRITERIA:

- Graduate student (regular or probationary admission)
- Full-time
- Minority student 
- U.S. citizen
- No graduate assistantship or other tuition waiver or assistance

Award
\$2,000.00

Deadline
03/01/2024


The scholarship application makes clear that the award is only “for underrepresented students,” which the form defines as “Native American/Alaskan Native, Hispanic, African American, or Asian or Island Pacific Islander.”⁵

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 See <https://wiu.academicworks.com/opportunities/12072>
[<https://web.archive.org/web/20240218023014/https://wiu.academicworks.com/opportunities/12072>]
(accessed on Feb. 17, 2024).

⁵ See https://www.wiu.edu/student_services/scholarship/pdf/PMGAP.APP.pdf
[http://web.archive.org/web/20240218022823/https://www.wiu.edu/student_services/scholarship/pdf/PMGAP.APP.pdf] (accessed on Feb. 17, 2024).

**PRESIDENT'S MINORITY GRADUATE ACCESS PROGRAM APPLICATION
for Underrepresented Students*** 

Name: _____ Student ID #: _____

Address: _____

Undergraduate College or University: _____


Check One: U.S. Citizen Permanent Resident

Applying for funds beginning: Fall 20____ or Spring 20____

Attach an essay (500-1,000 words) that addresses the following:

1. Your short and long term career goals and how a graduate degree will help you to attain these goals.
2. The impact of your undergraduate degree toward your career goals. Describe whether your undergraduate experience was positive or negative, and how you will apply this experience to your graduate education and career goals.
3. Discuss your extracurricular activities, work experience, volunteer work, or any other information you feel might appropriately illustrate your potential as a mature individual pursuing a graduate degree.

Attach or submit separately at least one letter of recommendation using the Recommendation Form.


*Underrepresented students have one or more ethnic origin: Native American/Alaskan Native, Hispanic, African American, or Asian or Island Pacific Islander. 

2. **Robert H. Haley Educational Excellence Scholarship**: The criteria for this scholarship provides that “first preference will be given to African-American students.”⁶ The application deadline is March 1, 2024.

Robert H. Haley Educational Excellence Scholarship

Robert Haley graduated from Western Illinois University in 1985 with a bachelor's degree in Law Enforcement Administration and in 1987 with a master's degree in Law Enforcement Administration. At WIU he was involved with the Black Students Association and worked as a graduate assistant in the Gwendolyn Brooks Cultural Center. Robert is CEO and Chairperson of Q18 Behavioral Health, an office-based opioid treatment center near Cincinnati, Ohio. Robert was born and raised in East St. Louis and cares deeply about supporting his community.

CRITERIA:

- Student must have a 618-area code
- First preference will be given to African-American students 
- Good academic standing

Award
\$1,000.00

Deadline
03/01/2024

3. **Dr. Essie Manuel Rutledge Scholarship**: To be eligible for this scholarship, a student must be a full-time junior or senior at the university and be “African American.”⁷ The application deadline is March 1, 2024.

⁶ See <https://wiu.academicworks.com/opportunities/13155> [https://archive.is/Njd8B] (accessed on Feb. 17, 2024).

⁷ See <https://wiu.academicworks.com/opportunities/12418> [https://archive.is/fUijj] (accessed on Feb. 17, 2024).

DR. ESSIE MANUEL RUTLEDGE SCHOLARSHIP

Dr. Rutledge was Chair/Professor of African American Studies at WIU from September 1976 until 1984 and Professor of Sociology from January 1983 until her retirement. She was the first and only African American female ever to chair a department at WIU as of the time the fund was established. CRITERIA: Full-time, African American student, Junior or Senior (minimum 60 semester hours completed) by Spring, prior to Fall award, Minimum cumulative GPA of 3.0 (transfer GPA may be included) after 30 semester hours at WIU, First preference, African American Studies Major, Second preference, Sociology major with an African American Studies minor, Third preference, any major, Written essay ??? 2-3 pages to explain what previous and/or present activities and experiences demonstrate her/his potential leadership qualities that foster social justice.

4. **James and Veronica Shipp Scholarship**: To be eligible for this award, the applicant must be an “African-American incoming freshman student.”⁸ The application deadline is March 1, 2024.


James and Veronica Shipp Scholarship

HISTORY:

James E. Shipp received his bachelor's degree in education from Western in 1964. Shipp began his career in 1964 in the Juvenile Justice System for the State of Illinois, and later with the City of Chicago. Four years after graduating from WIU, he was selected to participate in the first National Urban Fellow class and was assigned to fieldwork with the Bedford Stuyvesant Restoration Corporation in Brooklyn, NY. Shipp eventually became vice president of the Bad-Stuy Corporation until 1979. In addition to his work with the Restoration Corporation, he also served as a director of several city, state and national organizations focused on urban development issues. In addition to serving as president and CEO of Shipp Enterprises, LLC in White Plains, NY, Shipp has maintained a commitment and dedication to public service by continuing to serve on such boards as the South Bronx Overall Economic Development Corporation, the Mid Bronx Desperados Community Housing Corporation and the Gillen Brewer School for children with disabilities.

While a student at WIU, Shipp was a member of Tau Kappa Epsilon fraternity and was a record-setting, conference champion and national finalist wrestler. Shipp was inducted into the WIU Athletic Hall of Fame in 1997 and received the WIU Distinguished Alumnus Award in 1996. Shipp also received an honorary Doctorate from WIU in May of 2018. He remains an active member of his alma mater as a member of the WIU President's National Advisory Board.

CRITERIA:

- African-American incoming freshmen student 
- Preferably first-generation college student
- Minimum 2.75 GPA
- Major in the university's STEM (science, technology, engineering or math) programs. (A change in majors terminates their eligibility for funding from these resources.)
- Students must submit an essay describing their interest in the major selected.

TERMS:

Award amount is \$4000 per year. Amount will be applied to the student's university account, half Fall and half Spring. When accumulated income is sufficient for more than one scholarship, two or more recipients may be selected.

Automatically be eligible for funding for the next three years if they maintain a 2.75 for each academic year.

5. **Ralph and Gladys Anderson Scholarship for African Americans**: To be eligible for this scholarship, the applicant must be an “African American student.”⁹ The application deadline is March 1, 2024.

RALPH & GLADYS ANDERSON SCHOLARSHIP FOR AFRICAN AMERICANS

The Ralph and Gladys Anderson Scholarship was established by Ralph and Gladys Anderson. Gladys saved enough money to fulfill her high school dream of attending Western Illinois State Teachers College. CRITERIA: African American student, Curriculum & Instruction major pursuing the Elementary Education option at WIU, Completed 60 semester hours in the spring prior to fall award, Minimum cumulative GPA 3.0 (includes transfer GPA for new transfers).

⁸ See <https://wiu.academicworks.com/opportunities/12933> [<https://archive.is/azVns>] (accessed on Feb. 17, 2024).

⁹ See <https://wiu.academicworks.com/opportunities/12071> [<https://archive.is/uYbgf>] (accessed on Feb. 17, 2024).

6. **Dr. George E. Ayers Scholarship**: To qualify for this scholarship, an applicant must be a “minority.”¹⁰ While WIU does not define “minority,” it is clear from the nature of the scholarship and other WIU programs listed below that use that term, that “minority” is a racial and/or ethnic classification. The application deadline for this scholarship is March 1, 2024.

Dr. George E. Ayers Scholarship

The Ayers Family Established this memorial scholarship for Dr. George E. Ayers who earned a B.S. degree from WIU in 1961. Dr. Ayers spent more than 50 years in higher education as a university administrator and then as a consultant. He was always concerned with the access to higher education for under served groups and successful completion of degree programs.

Criteria:

US. Citizenship

Minority 

GPA 3.0

Financial Need

Any class


Rank by highest GPA

7. **Michael Litwin Scholarship**: To qualify for this scholarship, an applicant must be a “minority student from Chicago.”¹¹ The application deadline is March 1, 2024.

Michael Litwin Scholarship

The Michael J. Litwin Scholarship was established by WIU College of Business alumnus, Michael J. Litwin.

CRITERIA:

- Incoming freshman
- Minority student from Chicago 
- Minimum ACT 25
- Upper 20% of graduating class
- Pre-business major

Award

\$2,000.00

Questions regarding eligibility? Contact:

WIU Scholarship Office (New Freshman)

Deadline

03/01/2024

¹⁰ See <https://wiu.academicworks.com/opportunities/11741> [https://archive.is/dIEoZ] (accessed on Feb. 17, 2024).


¹¹ See <https://wiu.academicworks.com/opportunities/11367> [https://archive.is/mgC99] (accessed on Feb. 17, 2024).

8. **Minority Achievement Scholarship**: To be eligible for this scholarship, applicants must be “ethnic minorities.”¹² The application deadline is March 1, 2024.

Minority Achievement Scholarship

The Minority Achievement Program was established to support talented minority students enrolled at WIU.

CRITERIA:

- Incoming freshman
- Ethnic minority 
- U.S. citizen
- Minimum ACT 20 and graduated in upper 1/3 of high school graduating class or has a 3.5 GPA
- Leadership, community service, and extracurricular activities may be considered
- Preference given to a student who is not receiving the Western Centennial or another Foundation Scholarship

9. **Leroy Daniels Scholarship**: To be eligible for this scholarship, an applicant must be a “minority student.”¹³ The application deadline is May 1, 2024.

Leroy Daniels Scholarship

The Leroy Daniels Scholarship was established in 1986 by the Gwendolyn Brooks Cultural Center and community donors including the late Lois Mills, WIU Librarian, in memory of Leroy W. Daniels. Daniels was employed at WIU from September 1968 until his death in August 1984. Leroy, along with his brother Joe, was one of the organizers and a charter member of the McDonough County Chapter of the NAACP (established in 1969). He served as president for more than 11 years.


CRITERIA:

- Minimum 2.5 cumulative GPA
- Minority student 
- Illinois resident
- Demonstrated evidence of leadership activities in college or the community is desired
- Preference is given to a student graduate of Macomb Senior High School

10. **WIU-QC Minority Student Scholarship**: To be eligible for this scholarship, an applicant must be a “minority student.”¹⁴ The application deadline is July 1, 2024.

WIU-QC Minority Student Scholarship

CRITERIA:

- Any class level
- Undergraduate or graduate
- WIU-QC student
- All majors
- Minimum 2.5 WIU GPA
- Minority student 
- Demonstrated volunteer service
- Financial need
- Essay

¹² See <https://wiu.academicworks.com/opportunities/12271> [https://archive.is/yCj1K] (accessed on Feb. 17, 2024).

¹³ See <https://wiu.academicworks.com/opportunities/11388> [https://archive.is/0jcZo] (accessed on Feb. 17, 2024).

¹⁴ See <https://wiu.academicworks.com/opportunities/12070> [https://archive.is/KkNhx] (accessed on Feb. 17, 2024).

11. **Ruth Hughes WESL Scholarship**: This scholarship explicitly provides that “preference will be given to African American students.”¹⁵ The application deadline has passed.

Ruth Hughes WESL Scholarship

Award: \$800 scholarship, available fall semester

- Closed.

Criteria:

- Open to a student enrolled at WIU who is preparing to enter the field of ESL and who might be a student assistant in the WESL Institute
- Open to a graduate of the WESL Institute who has become a regularly admissible full-time student at Western Illinois University
- Preference will be given to African American students. ←

12. **Joann Amos Elliott Memorial Scholarship**: This scholarship provides that “first preference” will be given to “a minority student.”¹⁶ The application deadline is March 1, 2024.

Joann Amos Elliott Memorial Scholarship

John Elliott established the Joann Amos Elliott Memorial Scholarship in memory of his wife. Joann attended Monmouth High School where she was an outstanding student, splendid athlete, and a cheerleader. After high school Joann enrolled at Western Illinois University where she met the love of her life John Elliott. John and Joann were married on April 10, 1964 in Macomb. John participated in track and field at Western and was a member of Alpha Phi Omega. John had an outstanding career in business and in recognition of his achievements he received the Alumni Achievement Award in 2017 from Western Illinois University. Joann cherished her family and the many great times she had with them. Joann cherished her role as a mother and a grandmother and together John and Joann shared a lifetime of laughter, joy, and pride in their family.

CRITERIA:

- *Graduate of Monmouth-Roseville High School
- *Incoming freshman student
- *Minimum high school cumulative 3.0 GPA
- *Participation in school and/or community activities
- *First preference to a minority student ←

Scholarships That Discriminate By Sex

13. **Supporting LGBTQ+ Leathernecks Scholarship**: The description of this scholarship provides that it “is intended for LGBTQ+ identified WIU students who demonstrate financial need and are in good academic standing. Priority should be given to LGBTQ+ identified undergraduate students, next priority shall be LGBTQ+ identified graduate students. Should no applicants who identify as LGBTQ+ at the undergraduate level, the scholarship may be awarded to undergraduate students who demonstrate financial need and also indicate

¹⁵ See https://www.wiu.edu/global_studies/scholarships.php [https://archive.is/WVGhi] (accessed on Feb. 17, 2024).

¹⁶ See <https://wiu.academicworks.com/opportunities/12901> [https://archive.is/RdDpE] (accessed on Feb. 17, 2024).

examples of personal allyship in support of LGBTQ+ individuals.”¹⁷ The deadline to apply is March 1, 2024.

Supporting LGBTQ+ Leathernecks

Molly B. Holmes is a double alumnus of WIU (B.S., '01, M.S., '04). With degrees in Health Education-teacher education and College Student Personnel, Molly's passion for educating others began at Western. Because of support of both her academic goals and queer identity at WIU, Molly has committed her professional work to creating similar support for individuals with underrepresented identities. She currently serves as the director of the Gender and Sexuality Resource Center at Northern Illinois University.


CRITERIA:

This scholarship is intended for LGBTQ+ identified WIU students who demonstrate financial need and are in good academic standing. Priority should be given to LGBTQ+ identified undergraduate students, next priority shall be LGBTQ+ identified graduate students. Should no applicants who identify as LGBTQ+ at the undergraduate level, the scholarship may be awarded to undergraduate students who demonstrate financial need and also indicate examples of personal allyship in support of LGBTQ+ individuals.

Scholarships That Discriminate By Race And Sex


14. **Marchet Harts Communication Award for Women of Color**: This scholarship is restricted to “women of color.”¹⁸ The application deadline is March 1, 2024.

CRITERIA:

- Woman of color 
- Incoming Freshman or Transferring Junior
- Student should pursue a Communication major in any related discipline with the Department of Communication, and demonstrate a desire to graduate and contribute to said career field.
- Applicant should write a one to two-page essay on their career aspirations. The essay should include how the student plans to give back to their alma mater after graduation.

Additionally, the application includes “supplemental questions” which explicitly ask whether the applicant “identif[ies] as a person of color.”¹⁹

Supplemental Questions

1. Do you consent to participating in a mentorship opportunity with Minda Harts?
2. If selected as the scholarship recipient, do you:
 - Authorize the release of your contact information (WIU email, phone number) to the donor?
 - Phone Number:
3. Do you identify as a person of color? 
4. Describe your educational and career aspirations and how you plan to give back to your alma mater (Western Illinois University) after graduation.

15. **The Donald A. Haisch Scholarship**: The scholarship provides that “first preference should be given to applicants who self-identify as LGBTQ+” and that “second preference is for BIPOC recipients.”²⁰

¹⁷ See <https://wiu.academicworks.com/opportunities/11878> [https://archive.is/JRtoB] (accessed on Feb. 17, 2024).

¹⁸ See <https://wiu.academicworks.com/opportunities/11311> [https://archive.is/h63uL] (accessed on Feb. 17, 2024). BIPOC is a commonly used acronym for “black, indigenous and people of color.”

¹⁹ *Id.*

²⁰ See <https://wiu.academicworks.com/opportunities/11413> [https://web.archive.org/web/20240218024949/https://wiu.academicworks.com/opportunities/11413] (accessed on Feb. 17, 2024).

Donald A. Haisch Scholarship

This scholarship fund has been established by Mr. Donald A. Haisch in the spring of 2020. At the time of creation, Mr. Haisch is a Managing Director and Chief Accounting Officer, Real Estate in the Ares Finance, Accounting and Operations Department. Prior to joining Ares in 2014, Mr. Haisch was a Senior Vice President in the Finance Department of CBRE. Mr. Haisch serves on the Board of Directors of Bob Hope USO, which provides USO services, programming and outreach in Southern and Central California. He holds a B.S., magna cum laude, from Western Illinois University in Accounting and an M.B.A. from the University of California Los Angeles. In addition to a variety of University activities, he participated in the Accounting Society and Beta Alpha Psi.

CRITERIA:

Major in Accounting
Minimum 2.5 GPA
Enrolled full-time
Involvement in department activities and a demonstrated interest in an accounting-related career
Junior level standing, or 60 credit hours completed, at time award is made
First preference should be given to applicants who self-identify as LGBTQ+
Second preference is for BIPOC recipients

Award

\$1,000.00

Questions regarding eligibility? Contact:

Accounting & Finance, College of Business & Technology

Deadline

03/01/2024

Supplemental Questions

1. Diversity scholarship
 - o Do you consider yourself a member of the LGBTQ+ community?
 - o If yes, How do you label that group?

16. Alejandro Valadez Memorial Scholarship in Law Enforcement & Justice Administration: Eligibility for this scholarship requires that the supplicant be a “Latino male student.”²¹ The application deadline in March 1, 2024.

ALEJANDRO VALADEZ MEMORIAL SCHOLARSHIP

Following the death of Police Officer Alejandro “Alex” Valadez, Sigma Lambda Beta fraternity brothers chose to honor him with a scholarship at WIU. CRITERIA: Student must be a second semester freshman, sophomore, junior, or first semester senior, Latino male student, Strong commitment to academics, 3.0/4.0 GPA at WIU.

The Scholarships Listed Above Violate The Law

WIU violates Title VI by conditioning eligibility for certain scholarships on race, national origin and skin color. And, it violates Title IX where its scholarships condition eligibility on the applicant’s gender, sexual orientation or gender identity. Because WIU is a public institution, its participation in the scholarships listed here also violates the Equal Protection Clause of the Fourteenth Amendment.²²

²¹ See <https://wiu.academicworks.com/opportunities/11964> [https://archive.is/nkH55] (accessed on Feb. 17, 2024).

²² 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 WIU. 42 U.S.C. § 2000(a)(a). Several, if not all, of the scholarships listed here also violate the Illinois Human Rights Act, which prohibits discrimination based on, among other categories, race, color, sexual

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 WIU receives federal funds,²³ 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 WIU’s reasons for sponsoring and promoting these scholarships, 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

orientation and gender-identity. 775 I.L.C.S. 5/1 et seq. Finally, these scholarships defy WIU’s own non-discrimination policy. *See* <http://tinyurl.com/bddhnat9> [<https://archive.is/jw2To>] (accessed on Feb. 18, 2024).

²³ *See* <https://www.wiu.edu/foundation/faq.php> [<https://archive.is/VQyHN>] (accessed on Feb. 18, 2024).

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 sexual orientation or gender identity 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 WIU 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).²⁴ The scholarships at issue here flunk 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, WIU cannot demonstrate that restricting participation in scholarships to students who are “African American,” “Latino men,” “women of color,” “BIPOC” “LGBTQ+ identified,” “minorities,” “ethnic minorities,” “Native American/Alaskan Native,” “Hispanic” or “Asian or Island Pacific Islander” 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

²⁴ 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 533. The scholarships identified in this complaint fall short of satisfying this standard for the same reasons they fail strict scrutiny.

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).²⁵ 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 program must be based on “individualized consideration,” and race must be used in a “nonmechanical way”). Here, the race-based eligibility criteria are mechanically applied. If applicants do not meet the racial requirements, they are either automatically disqualified for the scholarships or relegated to a non-preferred status. 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. Indeed, in *Students for Fair Admissions*, the Supreme Court found that similar categories as those used by WIU for the above-listed scholarships were “imprecise,” “plainly overbroad,” “arbitrary,” “undefined” and “opaque.” *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at *47-48,²⁶ and declared that

²⁵ 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.”)

²⁶ 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).

“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 WIU’s blatant racial preference system for a wide range of their scholarships 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. WIU is a public institution and a recipient of federal funds. It is therefore liable for violating Title VI, Title IX and the Equal Protection Clause.

The Complaint Is Timely

This complaint is timely brought because it includes allegations of discrimination based on race, color, national origin and sex 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 discriminatory scholarship eligibility criteria outlined above are presumptively invalid, and since WIU cannot show any compelling government justification for

those restriction, WIU'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 WIU's role in creating, supporting and promoting these scholarships – and, given the amount of them, to discern whether WIU 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 WIU, 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 WIU scholarships based on discriminatory criteria, and ensure that all ongoing and future programming through WIU comports with the Constitution and federal civil rights laws.

Sincerely,



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-And-

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