



THE EQUAL PROTECTION PROJECT
A Project of the Legal Insurrection Foundation
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June 10, 2024

(Via Email)

David N. Cicilline
President and Chief Executive Officer
The Rhode Island Foundation
One Union Station
Providence, RI 02903

G. Alan Kurose, MD
Chair of the Board of Directors
The Rhode Island Foundation
One Union Station
Providence, RI 02903

Re: Cease and Desist From Racially Discriminatory Scholarships and Grants

Dear President Cicilline and Chair Kurose:

The Equal Protection Project (EPP) (EqualProtect.org) is a project of the Legal Insurrection Foundation (LIF), a Rhode Island tax exempt non-profit, devoted to the equal treatment of all persons without regard to race or ethnicity. Our guiding principle is that there is no “good” form of racism, and the remedy for racism never is more racism.

We write to you in your capacities, respectively, as President and CEO, and Chair of the Board of Directors, of The Rhode Island Community Foundation, dba The Rhode Island Foundation (RIF), a grant-making community charity, According to its 2023 Annual Report issued May 15,

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2024,¹ during 2023 RIF had approximately \$1.4 billion in assets (making it one of the largest community foundations in the nation²), awarded approximately \$4 million in scholarships, and made \$89 million in grants to approximately 2500 organizations.

It has come to our attention that RIF funds or administers grant and scholarship programs that on their face discriminate on the basis of race. Indeed, in its 2023 Annual Report, RIF highlights the Educator of Color Loan Forgiveness Program (Educator of Color Program)³ at the Providence Public School District (PPSD):

To address the diversity gap between students and teachers in Providence, the Providence Public Schools set out in 2021 to recruit approximately 25 new teachers of color a year for five years, with student loan repayment as a benefit. Full-time teachers who identify as Black, Asian, Indigenous, Latino or multi-racial are eligible.

As you may be aware, LIF filed a Civil Rights Complaint⁴ against PPSD regarding this program which is pending in the U.S. Equal Opportunity Employment Commission, on referral from the U.S. Department of Education. The Educator of Color Program was implemented through a contractual agreement between RIF and PPSD, which imposes these discriminatory contractual requirements on applicants. The Educator of Color Program is open racial discrimination; white teachers are excluded. It should be shocking to anyone who believes in equality and equal protection of the law that RIF highlights this racially discriminatory program in its annual report.

There are numerous other programs and scholarships funded by or through RIF that discriminate on the basis of race, including the ones on this non-exhaustive list:

- **The Equity Leadership Initiative**, which according to RIF’s website,⁵ “supports existing leaders of color who are working in the public, private, or nonprofit sectors.”
- **The Black Philanthropy Bannister Scholarship**, which is only open to “African American/Black high school graduate[s] or adult student applicant[s].”

¹ <https://rifoundation.org/news/2023-annual-report>

² <https://cof.org/cfinsights/results/2022/data-lists-assets>

³ <https://www.providenceschools.org/Page/6098> [<https://archive.is/NJMac>]

⁴ <https://legalinsurrection.com/wp-content/uploads/2022/11/LIF-Admin-Cmplt-With-DOE-OCR-Against-PPSD-11-14-22.pdf>

⁵ <https://rifoundation.org/community-investments/equity-leadership-initiative> [<https://archive.is/gSff7>]

Black Philanthropy Bannister Scholarship

- ✓ Completion of Universal Scholarship Application
- ✓ African American/Black high school graduate or adult student applicant
- ✓ Rhode Island resident
- ✓ Pursuing or advancing a career in healthcare at a post-secondary institution (college or technical school)
- ✓ Financial need
- ✓ May be renewable for up to four years: past recipients are eligible to reapply

- **The Martin Luther King Scholarship**, which is only open to applicants who are “African American/Black”

Martin Luther King Scholarship

- ✓ Completion of Universal Scholarship Application
- ✓ Rhode Island resident
- ✓ Applicants must be African-American/Black
- ✓ Must demonstrate academic and leadership success
- ✓ Accepted or enrolled in an accredited post-secondary college or technical school within the U.S.
- ✓ Financial need
- ✓ Past recipients are eligible to reapply

- **RDW Group Communications Scholarship for People of Color**, open only to applicants who are a “Rhode Island person of color.”

RDW Group Communications Scholarship for People of Color

- ✓ Completion of Universal Scholarship Application
 - ✓ Rhode Island person of color
 - ✓ Studying communications at the undergraduate or graduate level (see application for areas of study)
 - ✓ Award: \$500 - \$3,500; past recipients are eligible to reapply
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- **Black Philanthropy Bannister Fund Grants**,⁶ for which “[p]riority will be given to organizations that primarily serve the Black community and are Black led.”
- **Community Organization Capacity Building Grants**,⁷ which are “intended to support Rhode Island-based nonprofits led by Black, Latino, Indigenous, or Asian executive directors or other decision-makers within an organization.”
- **Racial Equity and Social Justice Grants Program**,⁸ which RIF announced⁹ in October 2022, for which “[p]riority will be given to organizations that are led by people who identify as Asian, Black, Hispanic or Latino, Indigenous or multiracial as well as people who are engaged in efforts that are grounded in the needs of diverse communities in Rhode Island.”
- **Additional race-based grants to educational organizations**. In June 2023, RIF announced¹⁰ the grant of \$1.2 million to four organizations, at least two of which were conditioned on racially discriminatory factors:

“The Equity Institute will receive \$300,000 to establish a teacher apprenticeship program to recruit and train teacher assistants of color to be state certified teachers in Newport public schools....”

The University of Rhode Island will receive \$300,000 to enhance its own programs targeting students of color who plan to become teachers and to develop a teacher-preparation program at Highlander Charter School....”

- **Community Grants**. In March 2024, RIF announced¹¹ it was “taking applications for \$10,000 grants from local libraries, neighborhood groups and nonprofit organizations” and that “[p]riority will be given to projects that are led by or serve historically

⁶ <https://rifoundation.org/grant/black-philanthropy-bannister-fund-grants> [<https://archive.is/IgVqI>]

⁷ <https://rifoundation.org/grant/community-organization-capacity-building-grants>
[<https://archive.is/Gsy0A>]

⁸ <https://web.archive.org/web/20230325004533/https://rifoundation.org/grant/racialequityandsocialjustice>
⁹ <https://rifoundation.org/news/rhode-island-foundation-offers-2-million-to-address-structural-racism-across-the-state> [<https://archive.ph/itftk>]

¹⁰ <https://rifoundation.org/news/grants-will-improve-student-performance-in-providence-pawtucket-newport-and-central-falls-schools> [<https://archive.is/G7N12>]

¹¹ <https://whatsupnewp.com/2024/03/rhode-island-foundation-is-accepting-applications-for-10000-grants-to-support-community-projects/> [<https://archive.is/Fz3na>]

marginalized groups” defined on RIF’s website¹² as “including Asian, Black, Hispanic or Latino, Indigenous, or multiracial community members.”

As reflected in the non-exhaustive list above, race-based scholarships and grant-making are widespread at RIF.¹³ It appears that all applications are processed, reviewed, and approved by RIF through a central RIF application portal.

In *Students for Fair Admissions v. President and Fellows of Harvard University*, 600 U.S. 181 (2023) (“*SFFA*”),¹⁴ the United States Supreme Court held that race-conscious admissions violated the Equal Protection Clause of the 14th Amendment (noting the same standard applied under the Civil Rights Act of 1964).¹⁵ The implications of the *SFFA* ruling go beyond university admissions.

In light of *SFFA*, another substantial Rhode Island charity with extensive race-based grantmaking, the Papitto Opportunity Connection (POC), paused its race-based grant-making, as reported in *The Providence Journal*.¹⁶ The Managing Trustee of POC, distinguished Rhode Island Attorney John Tarantino, was quoted on the potential implications of *SFFA* for grant-making foundations:

“They say, for example, that if there is a contract and the contract is given in such a way that it favors a particular race or disfavors a particular race, that also is likely a violation of the law,” Tarantino said. “I read that immediately and I started to get concerned.

A Roger Williams Law School Professor was quoted in the article about the legal risks to grant-making foundations:

As Roger Williams University Law School professor Michael Yelnosky explained, a particular section of federal law [42 U.S.C. § 1981¹⁷] makes it – in Yelnosky's words – “unlawful for even private parties ... to discriminate on the basis of race in contracting”.

¹² <https://rifoundation.org/grant/community-grants> [<https://archive.is/wUgKa>]

¹³ Because of the unorganized way in which race-based scholarships and grants are presented on the RIF website and communications, it is possible there is some overlap in the scholarships/grants listed above, and likely that there are additional such programs.

¹⁴ https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf

¹⁵ LIF filed an Amicus Brief in support of Petitioner in *SFFA*.

https://www.supremecourt.gov/DocketPDF/20/20-1199/222854/20220509155854351_20-1199%20and%2021-707_Amicus%20Brief.pdf

¹⁶ <https://www.aol.com/foundation-established-help-communities-color-091516064.html>. [<https://archive.is/vsY3z>]

¹⁷ Hyperlink in original: <https://www.law.cornell.edu/uscode/text/42/1981>

“Certainly an organization that is known to give money to other organizations based on either the population that organization serves or the racial makeup of the leaders of that organization, they’re the ones who I think have the most legal exposure,” Yelnosky said.

POC further stated in October 2023 that it would continue to make grants that support diversity, equity, inclusion, and belonging, but “that do not condition eligibility on race, do not make decisions based on race, and do not exclude individuals based on their race.”

“In July 2023, the Papitto Opportunity Connection paused grantmaking following the United States Supreme Court’s decision in two cases challenging affirmative action at universities, *SSFA v. Harvard* and *SSFA v. UNC*. The Court ruled that the programs violated Title VI and the Equal Protection Clause, respectively, by discriminating in, among other things, the admissions processes because the programs in some way favored applicants based on race.

At the time we paused grantmaking, we did so in order to allow POC’s legal counsel the opportunity to research the issues and provide guidance to us on how to best proceed to ensure both POC and our grantees were operating within the law.

In September, we received advice from POC’s legal counsel on the current state of the law and recommendations on how we can move forward while remaining committed to our founding principles. At that time, we decided that, going forward, we will support initiatives that are designed to foster diversity, equity, inclusion and belonging but that do not condition eligibility on race, do not make decisions based on race, and do not exclude individuals based on their race. Our legal counsel is continuing to monitor developments in the law and we will continue to evaluate our work to ensure it comports with the law.”¹⁸

POC informed us last week that it “continue[s] to follow this process.”

RIF, by contrast, declined to take a position similar to POC to halt race-based grant making, according to the *The Providence Journal* article cited above. To the contrary, as the non-exhaustive list above reflects, RIF appears to have forged ahead with race-based scholarships and grants notwithstanding the ruling in *SFFA*.

The caution of POC and those quoted above was well-founded, as the United States Court of Appeals for the 11th Circuit recently issued a preliminary injunction against a grant program limited to black women that mirrors the types of race-based discrimination present in the RIF

¹⁸ See email from Gregg Perry of POC, quoted at <https://legalinsurrection.com/2023/10/scotus-affirmative-action-fallout-ri-based-charity-halts-race-based-grant-making/>.

scholarships and grants listed above. We call this case to your attention because it directly implicates RIF's business practices and the potential legal liability of RIF and its donors.¹⁹

Section 1981 of The Civil Rights Act of 1866, 42 U.S. Code §1981,²⁰ provides:

(a) STATEMENT OF EQUAL RIGHTS

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "MAKE AND ENFORCE CONTRACTS" DEFINED

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) PROTECTION AGAINST IMPAIRMENT

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

In *American Alliance for Equal Rights v. Fearless Fund Management LLC et al.* ("Fearless Fund"),²¹ the Eleventh Circuit Court of Appeals held, among other things, that the grant application process formed a contract within the meaning of 42 U.S.C. § 1981; the statute applied equally to discrimination against whites as against blacks; the grant program did not fit under the very narrow "remedial" exception to the non-discrimination requirement; and the discriminatory grant-making conduct was not protected by the First Amendment.

Because we think it probable that Fearless's contest (1) constitutes a "contract[]" within the meaning of § 1981, (2) doesn't qualify for any remedial-program exception that might apply, and (3) isn't protected by the First Amendment, we hold that the Alliance has established a substantial likelihood that it will succeed on the merits of its claim.

¹⁹ To the extent RIF is administering a program in which the discriminatory contractual provisions are required by the donor, this would raise additional donor liability issues not addressed by *Fearless Fund*.

²⁰ <https://www.law.cornell.edu/uscode/text/42/1981>

²¹ <https://media.ca11.uscourts.gov/opinions/pub/files/202313138.pdf>. The panel decision was 2-1, but the dissent was only as to standing. EPP filed an Amicus Brief in support of plaintiffs, <https://legalinsurrection.com/wp-content/uploads/2023/11/American-Alliance-v.-Fearless-Fund-11th-Circuit-Equal-Protection-Project-Amicus-Brief.pdf>

In granting injunctive relief, the court ruled:

[T]he balance of the equities weighs in the Alliance’s favor. Although Fearless will presumably need to change its contest rules to bring itself into compliance with § 1981, that burden pales in comparison to the interest in rooting out race discrimination in all its forms. Finally, the public interest is well served by vindicating § 1981’s terms and aims by ensuring racial equality in contracting.

The court further dismissed assertions that the harm was not genuine:

We’re talking about real-live, flesh-and-blood individuals who were excluded from the opportunity to compete in Fearless’s contest solely on account of the color of their skin.

So too here, RIF’s racially discriminatory scholarship and grant making affects both individuals and the community in the worst possible way, through the loss of opportunities “solely on account of the color of their skin.” Chief Justice Roberts, writing for the majority in *SFFA*, emphasized that “[e]liminating racial discrimination means eliminating all of it.” These race-based conditions, moreover, also appear to violate RIF’s own grant program guidelines,²² which state that RIF “does not fund any applicant or program with a discriminatory policy that is unlawful.”

In light of *SFFA* and *Fearless Fund*, it’s time for RIF to eliminate racial discrimination in its scholarships and grants.

The Equal Protection Project hereby demands that the Rhode Island Foundation cease and desist from awarding scholarships or making grants that condition eligibility on race, from making decisions based on race, and from excluding individuals or organizations based on race.

²² <https://rifoundation.org/grants-scholarships/find-a-grant-opportunity/grant-program-faqs>
[\[https://archive.is/SepPt\]](https://archive.is/SepPt)

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Please confirm to us within one week from the date of this letter whether RIF will end its race-based scholarship and grant practices, and embrace the non-discrimination required by law.

Very truly yours,

// William A. Jacobson //

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-and-

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