



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

September 23, 2024

BY E-MAIL (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: Civil Rights Complaint Against The University Of Arkansas For Race-Based Mentorship Program

To Whom It May Concern:

This is a federal civil rights complaint submitted 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 entity 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 make this civil rights complaint against the University of Arkansas ("U of A"), a public university located in Fayetteville, Arkansas, for sponsoring and promoting – in partnership with Sam's Club and Walmart – a racially discriminatory program called the BIPOC Mentor Circle Series ("BIPOC Mentor Circle").

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

On September 9, 2024, U of A announced creation of the BIPOC Mentor Circle Series. According to U of A's website,² a "core objective" of the program, whose monthly meetings will be held in a campus building during the 2024-2025 academic year, is "[t]o enhance the long-term professional development of BIPOC students as they transition into the workforce."³



The screenshot shows a news article header with the University of Arkansas logo and the word "NEWS" in large letters. Below the header, the article title "BIPOC Mentor Circle Series Initiated by Black Graduate Student Association" is displayed in red. The date "Sep. 09, 2024" is shown to the left of social media sharing icons. The main text begins with "As the fall semester gears up and planning for activities begins, the Black Graduate Student Association is organizing an important initiative: the BGSA BIPOC Mentor Circle series, co-sponsored by Sam's Club and Walmart." To the right of the text is a circular image of two students and a banner for the "BIPOC MENTOR CIRCLE SERIES" with dates: "OCTOBER 8, 2024", "NOVEMBER 5, 2024", and "DECEMBER 16, 2024".

CORE OBJECTIVES

- To share valuable career-related insights.
- To create awareness of job opportunities at Walmart & Sam's Club.
- To establish a new recruitment pipeline for internships and entry-level roles in merchandising and other corporate areas.
- To enhance the long-term professional development of BIPOC students as they transition into the workforce.



REGISTER Participants will be selected through an application process. Applicants are encouraged to share this opportunity within their networks. [Apply here](#) by Sept. 16.



This initiative is a tremendous resource for the professional development of BIPOC students and the campus community.

² See <https://news.uark.edu/articles/71134/bipoc-mentor-circle-series-initiated-by-black-graduate-student-association> [<https://archive.is/ufNdr>] (accessed on Sept. 22, 2024).

³ *Id.* U of A appears to use the standard definition of BIPOC: "Black, Indigenous, and People of Color." See <https://mentalhealth.uark.edu/bipoc-mental-health-resources/> [<https://archive.is/3jy1F>] (accessed on Sept. 22, 2024).

The BIPOC Mentor Circle is sponsored and promoted, at least in part, by U of A. Further, according to the U of A website, the points of contact for the program are the vice-president of U of A's Black Graduate Students Organization, who upon information and belief is an employee of U of A, and the U of A's Office of University Relations.⁴

CONTACTS

[REDACTED] vice-president
Black Graduate Student Association RSO
[REDACTED]
Office of University Relations,
University of Arkansas
479-575-5555, urelinfo@uark.edu

Upon information and belief, U of A funds the Black Graduate Student Association, a registered student organization,⁵ which is involved in administering the BIPOC Mentor Circle.

The application form for the program also states that the program is intended to “support and enrich the long-term talent cycle of the BIPOC student cohort class to transition and apply for roles within the Walmart corporation.”⁶

All the above will support and enrich the long-term talent cycle of the BIPOC student cohort class to transition and apply for roles within the Walmart corporation. This event will serve as a key part of their professional development as the students transition into the workforce.

And, the form requires applicants to identify their ethnicity and race.⁷

⁴ See <https://news.uark.edu/articles/71134/bipoc-mentor-circle-series-initiated-by-black-graduate-student-association> [<https://archive.is/ufNdr>] (accessed on Sept. 22, 2024) (redactions added).

⁵ See <https://hogsync.uark.edu/bsa/home/> [<https://archive.is/55vXM>] (accessed on Sept. 22, 2024) and <https://catalog.uark.edu/generalinfo/studentaffairs/#campuslifetext> [<https://archive.is/40cBn>] (accessed on Sept. 22, 2024).

⁶ See <https://forms.office.com/pages/responsepage.aspx?id=xELHeRzmpU--iaPLVmqa0VXra-IYVMRPo8NdYo-khVdUMjdQSzVJQkhFVFhGUExIVkRSRkg0M08wQS4u&route=shorturl> [<https://archive.ph/alCsV>] (accessed on Sept. 22, 2024).

⁷ *Id.*



5. Ethnicity *

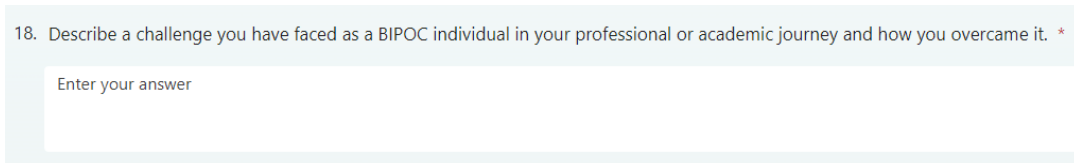
Black/ African American/ African

Indigenous/ Native American

Person of Color

Other

Another mandatory application question makes clear that applicants must be BIPOC by requiring them to “describe a challenge [they] have faced as a BIPOC individual in [their] professional or academic journey and how [they] overcame it.”⁸



18. Describe a challenge you have faced as a BIPOC individual in your professional or academic journey and how you overcame it. *

Enter your answer

The program’s monthly meetings are held on U of A’s campus, in one of its classroom buildings.⁹

- **Location:** Sessions will be held at the Willard J. Walker Hall room 504. Register by Sept. 16.

The BIPOC Mentor Circle Violates The Law

The BIPOC Mentor Circle violates Title VI because it conditions eligibility for participation on a student’s race, ethnicity and skin color. And, because U of A is a public university, its sponsorship, promotion and hosting of this discriminatory program also violates the Equal Protection Clause of the Fourteenth Amendment.¹⁰

⁸ *Id.*

⁹ See <https://directory.uark.edu/buildings/135/wjwh/willard-j-walker-hall> [<https://archive.is/FTn9h>] (accessed on Sept. 22, 2024).

¹⁰ The BIPOC Mentor Circle also violates (1) Arkansas law, which makes it unlawful to discriminate on the basis of race and other protected statuses. See, e.g., AR Code § 16-123-101, et seq. (2023), available at <https://law.justia.com/codes/arkansas/title-16/subtitle-7/chapter-123/subchapter-1/section-16-123-101/> (accessed on Sept. 22, 2024); (2) U of A’s own non-discrimination rules, see <https://policies.uark.edu/faculty-handbook/5-employment-records->

Title VI prohibits intentional discrimination based on 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 public system of higher education.” *See* 42 U.S.C. § 2000d-4a(2)(A). As U of A receives federal funds, including from the U.S. Department of Education, it is subject to Title VI.¹¹

Indeed, based on the requirement that participating students be BIPOC, the campus meetings would be *de facto* segregated by race, skin color, and ethnicity. Any reasonable student viewing the information on the U of A website would understand the racially exclusionary basis of the program, and non-BIPOC students would be dissuaded from even applying or attempting to participate.¹²

The BIPOC Mentor Circle clearly falls within the scope of Title VI and OCR’s jurisdiction. It does not matter that a particular program may be considered “extracurricular” or just a “club” or “group,” the same considerations apply as OCR noted in its 2023 Guidance on Race and School Programming recognizing that “[s]chool programs – including the ... establishment, recognition, or support of a school group, club, or other extracurricular organization” are covered by Title VI.¹³

It is no defense that 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

[sexual-assault-harrassment/02.php](https://www.usaspending.gov/search/?hash=ef2b048ae704d01d5142015f338f545d) [https://archive.is/QH9m8] (accessed on Sept. 22, 2024); and (3) Walmart’s Non-Discrimination policies, *see* https://www.walmartethics.com/content/walmartethics/en_us/faqs/our-associates/discrimination-and-harassment.html [https://archive.is/eovVs] (accessed on Sept. 22, 2024).

¹¹ *See* <https://www.usaspending.gov/search/?hash=ef2b048ae704d01d5142015f338f545d> [https://archive.is/orKQN] (accessed on Sept. 22, 2024).

¹² *See* OCR Guidance on Race and School Programming (2023), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-20230824.pdf> [https://web.archive.org/web/20240919154554/https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-20230824.pdf] (accessed on Sept. 22, 2024) (“In determining whether an opportunity to participate is open to all students, OCR may consider, for example, whether advertisements or other communications would lead a reasonable student, or a parent or guardian, to understand that all students are welcome to participate.”)

¹³ *Id.* at 3.

that class as a whole or otherwise promote equality at the group level.” *Students for Fair Admissions Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 289-90 (2023) (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 *290 (cleaned up). Thus, regardless of the reasons why U of A sponsors and promotes the BIPOC Mentor Circle, it violates Title VI by doing so.

And, because U of A is a public university, its sponsorship and promotion of the BIPOC Mentor Circle 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 184 (internal quotation marks and citation omitted). The program at issue here flunks that exacting test.

Under strict scrutiny, suspect classifications “are constitutional only if they are narrowly tailored measures that further compelling governmental interests.” *Adarand Constructors v. Pena*, 515 U.S. 200, 227 (1995). It is the government that bears the burden to prove “that the reasons for any [racial] classification [are] clearly identified and unquestionably legitimate.” *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 505 (1989). Here, U of A 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). Restricting eligibility for the BIPOC Mentor Circle based on race, skin color or ethnicity serves no legitimate governmental purpose, let alone an extraordinary one. Classifications based on such immutable characteristics “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*, 600 U.S. at 207 (citation omitted).¹⁴ Neither applies here.

¹⁴ Until recently the courts represented a third interest, “the attainment of a diverse student body,” 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*. *Students for Fair Admissions*, 600 U.S. at 233 (Thomas, J. concurring).

If the BIPOC Mentor Circle intended to achieve racial and ethnic balance in the workforce, 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 BIPOC Mentor Circle 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 BIPOC selection criterion is mechanically applied. If applicants are not BIPOC, they are automatically ineligible for the mentorship. To the extent that any individualized consideration exists, it only applies to distinguish between students who have first satisfied the threshold racial and ethnic 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 “BIPOC” eligibility requirement applies in an undifferentiated fashion to multiple racial/ethnic groups, it is overbroad and therefore not narrowly tailored. *Id.* (the “gross overinclusiveness” and undifferentiated use of racial classifications suggests that “the racial and ethnic groups favored by the [policy] were added without attention to whether their inclusion was justified”).

Indeed, in *Students for Fair Admissions*, the Supreme Court found that similar racial categories as those being used by U of A for the BIPOC Mentor Circle were “imprecise,” “plainly overbroad,” “arbitrary,” “undefined” and “opaque.” *Students for Fair Admissions*, 600 U.S. at 186-87, 217, 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.* at 217.

Similarly, the ineligibility of white students for the BIPOC Mentor Circle makes that program underinclusive, since the ethno-racial restriction is arbitrary and excludes swaths of candidates who could benefit from the program but who are not permitted to apply due to their race, ethnicity and skin color.

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 the racial and ethnic requirements for the BIPOC Mentor Circle are presumptively invalid, and in the absence of any compelling government justification for such

invidious discrimination, the use of such criteria violates federal civil rights statutes and constitutional equal protection guarantees.

OCR Has Jurisdiction

OCR has jurisdiction over this complaint. U of A is a public university and a recipient of federal funding, including from the U.S. Department of Education.¹⁵ It is therefore liable for violating Title VI and the Equal Protection Clause, and is subject to OCR’s jurisdiction.¹⁶

The Complaint is Timely

This complaint is timely brought because, as evidenced by the screenshot of U of A’s website below,¹⁷ it includes allegations of discrimination based on race, color and national origin that occurred within the last 180 days and that are ongoing.

- **Timeline:** The program will span the academic year from September/October to April, with monthly sessions. Session dates will be sent to the selected cohort. The first three sessions will be from 4-5 p.m. on these dates:
 - Oct. 8
 - Nov. 5
 - Dec. 10

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. This is true regardless of which race suffers discrimination. Race- color- and nationality-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*, 600 U.S. at 287 (Thomas, J., concurring).

Because the discriminatory eligibility criteria of the BIPOC Mentor Circle are presumptively invalid, and because U of A cannot show any compelling justification for those restrictions, the limitation of this mentorship based on race, color and ethnicity violates federal civil rights statutes and constitutional equal protection guarantees.

¹⁵ See <https://www.usaspending.gov/search/?hash=ef2b048ae704d01d5142015f338f545d> [https://archive.is/orKQN] (accessed on Sept. 22, 2024).

¹⁶ See <https://legalinsurrection.com/wp-content/uploads/2024/09/OCR-Case-Processing-Manual.pdf> at 7-8.

¹⁷ See <https://news.uark.edu/articles/71134/bipoc-mentor-circle-series-initiated-by-black-graduate-student-association> [https://archive.is/ufNdr] (accessed on Sept. 22, 2024).

The Office for Civil Rights has the power and obligation to investigate U of A's role in promoting and administering this program 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,” the Supreme Court has taught, “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 open a formal investigation, impose such remedial relief as the law permits for the benefit of those who have been illegally excluded from the U of A BIPOC Mentor Circle based on discriminatory criteria and ensure that all ongoing and future programming through U of A comports with the Constitution and federal civil rights laws.

Respectfully submitted,

/William A. Jacobson/

William A. Jacobson
President
Legal Insurrection Foundation
Contact@legalinsurrection.com