



**THE EQUAL PROTECTION PROJECT**  
**A Project of the Legal Insurrection Foundation**  
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November 14, 2024

**BY EMAIL** ([ocr.chicago@ed.gov](mailto: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 University of Minnesota Regarding Race-Based BIPOC Design Justice Initiative**

To Whom It May Concern:

This is a federal civil rights complaint pursuant to the U.S. Department of Education's Office for Civil Rights ("OCR") discrimination complaint resolution procedures. *See* 42 U.S.C. § 2000d-1; 34 C.F.R. §§ 100.7, 100.8, and 100.9.

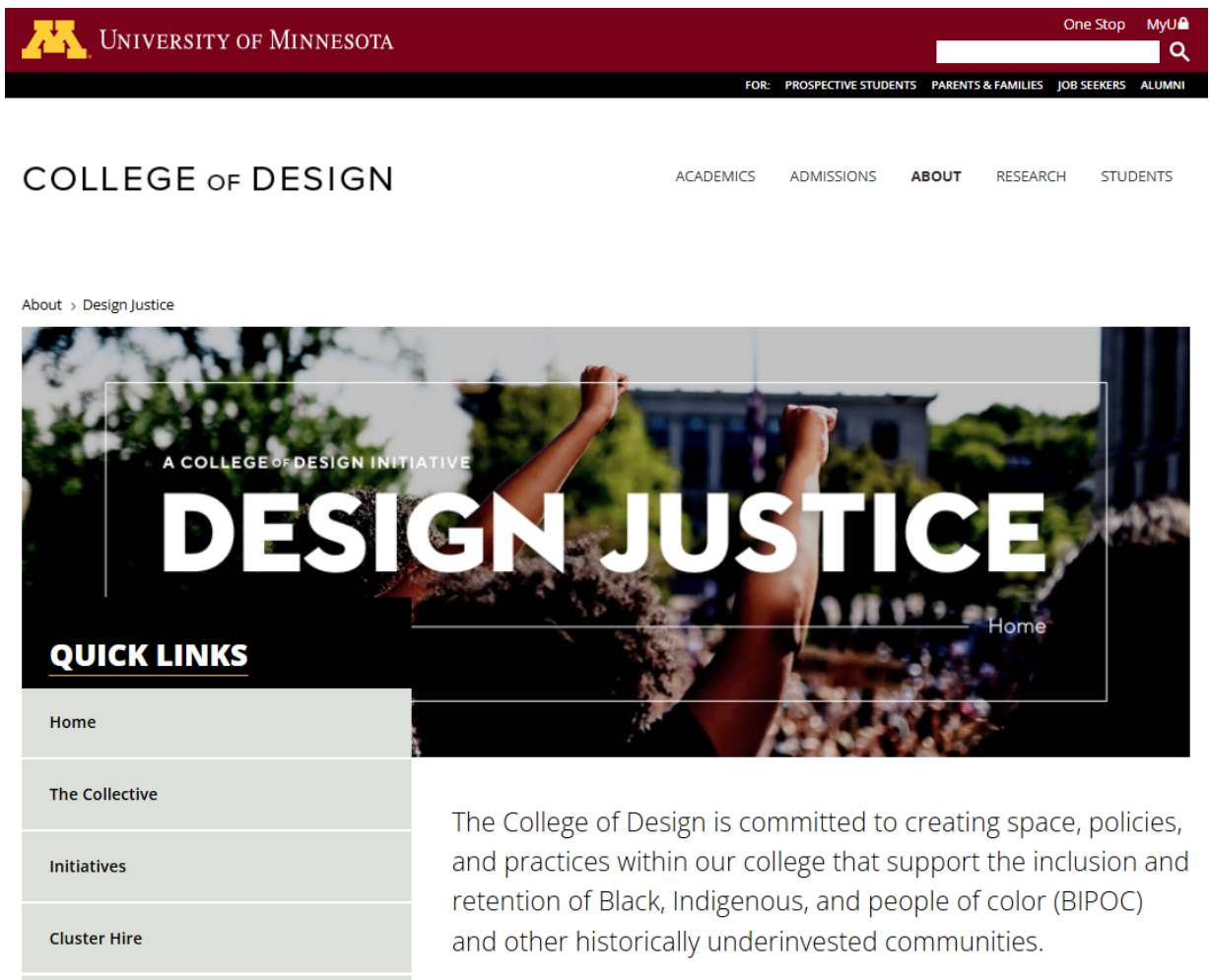
We write on behalf of the Equal Protection Project (EPP) of the Legal Insurrection Foundation, a non-profit that, among other things, seeks to ensure equal protection under the law and non-discrimination by the government, and that opposes racial discrimination in any form.

We bring this civil rights complaint against The University of Minnesota (UMN), a public university, which through its College of Design administers and promotes a racially-

discriminatory initiative called “Design Justice” (the “BIPOC Design Justice Initiative”).<sup>1</sup> As set forth below, because UMN is a repeat offender in programming that discriminates in favor of BIPOC students and against white students, having recently resolved a similar OCR complaint brought by EPP as to a different program, yet continued such discriminatory conduct with regard to the present program, we request expedited action by OCR.

### **The BIPOC Design Justice Initiative Discriminates Against White Students**

The stated goal of the BIPOC Design Justice Initiative is “creating space, policies, and practices within our college that support the inclusion and retention of Black, Indigenous, and people of color (BIPOC) and other historically underinvested communities.”



<sup>1</sup> See <https://design.umn.edu/justice> [https://archive.is/osDu6] [visited Nov. 12, 2024]

One of the initiatives of the BIPOC Design Justice Initiative is to regularly host “Design Justice Affinity Spaces” which are described as “affinity spaces for students and employees who identify as Black, Indigenous, and people of color (BIPOC), Queer, and white allies. These spaces are intentionally crafted to be an outlet and point of connection for the college around issues of identity and intersection. We also host an annual Graduation In Full Color Recognition Event for out BIPOC and Queer students.”<sup>2</sup>

## Design Justice Affinity Spaces >

We currently host affinity spaces for students and employees who identify as Black, Indigenous, and people of color (BIPOC), Queer, and white allies. These spaces are intentionally crafted to be an outlet and point of connection for the college around issues of identity and intersection. We also host an annual Graduation In Full Color Recognition Event for out BIPOC and Queer students.

One of the affinity groups/spaces is the Chroma Collective Student Group which is defined as a student group that “hosts monthly events and provide resources for/with **students who identify as Black, Indigenous, or people of color.**”<sup>3</sup>

## Chroma Collective Student Group >

The Chroma Collective Student Group hosts monthly events and provide resources for/with students who identify as Black, Indigenous, or people of color.

The BIPOC Design Justice Events website<sup>4</sup> provides for racially segregated events.

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<sup>2</sup> See <https://design.umn.edu/justice/initiatives> [https://archive.ph/jNfD9] [visited Nov. 12, 2024]

<sup>3</sup> *Id.* (emphasis added)

<sup>4</sup> See <https://design.umn.edu/justice/events> [https://archive.is/zQCdr] [visited Nov. 11, 2024]

## DESIGN JUSTICE EVENTS

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**Chroma Collective Events:** This undergrad/graduate student group is created for Black, Indigenous, and students of color (BIPOC) in the College of Design. Open events are meant for all identities/university affiliations and closed events are intentional spaces for BIPOC students.

**White Ally Affinity Space Events:** Intentional spaces for white allies/accomplices within the College of Design.

**Queer Affinity Space Events:** Intentional spaces for queer-identified (LGBTQIA2S+) persons within the College of Design.

**Graduation in Full Color Event:** Intentional space centering GRADUATING Black, Indigenous, and people of color (BIPOC) and/or queer-identified (LGBTQIA2S+) persons within the College of Design, their loved ones, supporters, and/or staff/faculty who hold these identities.

[Yellow highlighting added]

The Chroma Collective events are racially restricted as follows:

**“Chroma Collective Events:** This undergrad/graduate student group is created for Black, Indigenous, and students of color (BIPOC) in the College of Design. Open events are meant for all identities/university affiliations and closed events are intentional spaces for BIPOC students.”<sup>5</sup>

There is a separate space for whites:

**“White Ally Affinity Space Events:** Intentional spaces for white allies/accomplices within the College of Design.”<sup>6</sup>

Even family members and supporters are racially restricted:

**“Graduation in Full Color Event:** Intentional space centering GRADUATING Black, Indigenous, and people of color (BIPOC) and/or queer-identified (LGBTQIA2S+) persons within the College of Design, their loved ones, supporters, and/or staff/faculty who hold these identities.”<sup>7</sup>

The Registration Form<sup>8</sup> for BIPOC Design Justice Events repeats these racial restrictions:

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<sup>5</sup> *Id.* [underscoring added]

<sup>6</sup> *Id.* [underscoring added]

<sup>7</sup> *Id.* [underscoring added]

<sup>8</sup> *See*

[https://docs.google.com/forms/d/e/1FAIpQLSdUAm87dWYWPpEO\\_AVJKVju1rHvilht\\_WjkWUWqXgII5SadRXQ/viewform](https://docs.google.com/forms/d/e/1FAIpQLSdUAm87dWYWPpEO_AVJKVju1rHvilht_WjkWUWqXgII5SadRXQ/viewform) [https://archive.is/GqJhc] [visited Nov. 12, 2024]

# DESIGN JUSTICE EVENT REGISTRATION

*BIPOC Affinities, White Ally Affinities, & Queer Affinities*

## 2024-2025 Design Justice Event Registration Form

This form is to RSVP to any and all College of Design Design Justice events. This will give us accurate information to reserve space and order food. Please note that some events are intended to be intentional spaces for certain identities, however, there are affinity spaces for everyone!

**Chroma Collective Events:** This undergrad/graduate student group is created for Black, Indigenous, and students of color (BIPOC) in the College of Design. Open events are meant for all identities/university affiliations and closed events are intentional spaces for BIPOC students.

**White Ally Affinity Space Events:** These events are intended to be an intentional space for white allies and accomplices within the College of Design.

**Queer Affinity Space Events:** These events are intended to be an intentional space for queer-identified (LGBTQIA2S+) persons within the College of Design.

**Graduation in Full Color Event:** This event is intended to be an intentional space centering GRADUATING Black, Indigenous, and people of color (BIPOC) and/or queer-identified (LGBTQIA2S+) persons within the College of Design, their loved ones, supporters, and/or staff/faculty who hold these identities. **Register for this event**

**here:** <https://forms.gle/QcDBzpAkkRW7bYq36>

*Once registered, you will be added to the calendar invite for the event.*

Evidence of the segregated CLOSED BIPOC-only events during the 2024-2025 academic year is provided on the BIPOC Design Justice Event Registration website linked above:

Which **CLOSED Chroma Collective** events are you registering for? *Select all that apply.* \*

**Closed Chroma Collective Events:** Are intended to be an intentional space Black, Indigenous, and students of color (BIPOC) in the College of Design (undergraduate or graduate).

- None
- Chroma Collective Closed Event: Spill the Tea (9.11.24 Rapson Hall at 6-8PM)
- Chroma Collective Closed Event: Cultural Potluck (10.9.24 Rapson Hall at 630-830PM)
- Chroma Collective Closed Event: Break from Chaos (11.20.24 Rapson Hall at 6-8PM)
- Chroma Collective Closed Event: Cookies & Craft (12.11.24 McNeal Hall at 4-6PM)
- Chroma Collective Closed Event: Beading Night (1.22.25 Rapson Hall at 6-8PM)
- Chroma Collective Closed Event: Mendhi Night (3.19.25 Rapson Hall at 7-9PM)
- Chroma Collective Open Event: Food Drive (4.9.25 Rapson Hall at 4-7PM)
- Chroma Collective Closed Event: On Decolonization (4.30.25 Rapson Hall at 6-8PM)

In contrast, there also are the non-segregated OPEN Chroma Collective events open to all racial identities/university affiliations.

Which **OPEN Chroma Collective** events are you registering for? *Select all that apply.* \*

**Open Chroma Collective Events:** Are open to all racial identities/university affiliations.

- None
- Chroma Collective Open Event: New Blue Sun Block Party (9.9.24 Rapson Hall at 5-730PM)
- Chroma Collective Open Event: Haunting at CDes (10.30.24 Rapson Hall at 6-8PM)
- Chroma Collective Open Event: Collage for Change (2.19.25 Rapson Hall at 6-8PM)
- Chroma Collective Open Event: Food Drive (4.9.25 Rapson Hall at 4-7PM)

This regime of segregation is planned for the May 2025 graduation ceremonies and related events:<sup>9</sup>

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<sup>9</sup> See <https://docs.google.com/forms/d/e/1FAIpQLSdsvrAkJd0HnWEA4ug8qh36dQYnPr7EupCgvtmgdGvUYXGkNA/viewform> [https://archive.is/BqQSN] [visited Nov. 12, 2024]



**GRADUATION**  
**IN FULL COLOR**  
BIPOC + QUEER GRADUATION RECOGNITION EVENT

## BIPOC + Queer Graduation Recognition Event

Design Justice would like to congratulate our CDes BIPOC\* and CDes Queer\* graduates! We will be hosting a celebration gathering on Wednesday, May 14th, 2025 at 6 PM in Rapson Room.

We are creating space for celebration and the free expression of your identity. We are encouraging traditional dress attire or wearing attire that expresses who you! There is no official dress code. Our gathering will have recognition memorabilia, food, prizes, photo booth, an empowering guest speaker (to be announced), and more! We are opening this space to your loved ones to celebrate along with you so let us know if they will be in attendance.

We would appreciate your assistance in registering for the event so to have a good idea on how many people to expect. Register by May 1, 2025 to receive a certificate. Registration after May 1 will not guarantee a certificate but you will get a gift and meal.

\*Reminder: This event is intended to be an intentional space centering GRADUATING Black, Indigenous, and people of color (BIPOC) and/or queer-identified (LGBTQIA2S+) persons within the College of Design, their loved ones, supporters, and staff/faculty who hold these identities.

The BIPOC Design Justice Initiative has been widely publicized on campus, including in *The Minnesota Daily* student newspaper on November 8, 2024, *Chroma Collective provides space for BIPOC people in the College of Design*.<sup>10</sup>

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<sup>10</sup> <https://mndaily.com/290869/campus-activities/chroma-collective-provides-space-for-bipoc-people-in-the-college-of-design/> [https://archive.is/tmwov] [visited Nov. 12, 2024]



“The University of Minnesota’s Chroma Collective student group provides **an exclusive space for students who identify as Black, Indigenous or a person of color** within the College of Design.

The group meets twice a month and hosts **affinity events, which are events open to only students who are Black, Indigenous people or people of color**, to come together and speak about their experiences as well as open events that any undergraduate or graduate students can attend.

The group is a part of the College of Design’s Design Justice initiative, which is led by a collective of students, staff and faculty. These groups offer affinity spaces, certificate programs and consulting services to promote justice-centered design education and practice.” [emphasis added]<sup>11</sup>

### **The BIPOC Design Justice Initiative Violates The Law**

The BIPOC Design Justice Initiative violates Title VI because it conditions eligibility for participation the program on a student’s race, ethnicity and skin color. And, because the UMN is a public university, its administration of this discriminatory program also violates the Equal Protection Clause of the Fourteenth Amendment.<sup>12</sup>

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

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<sup>11</sup> The article further notes: “Director of Design Justice Teresa Moses, who works directly with the [Chroma Collective] group.” Teresa Moses is on the faculty of the University of Minnesota as an associate professor of graphic design in addition to being Director of Design Justice. Thus, although Chroma Collective is a student group it is supervised, administered and advised by a University faculty member.

<sup>12</sup> The BIPOC Design Justice Initiative also violates Minnesota’s Human Rights Act, which makes it unlawful to discriminate on the basis of race in “the access to, admission to, full utilization of or benefit from any public service.” Minn. Stat. §§ 363A.11(1), as well as UMN’s own Equal Opportunity Statement, which mandates that the university provide “equal access to and opportunity in its programs ... without regard to race, color [or] national origin[.]” *See* <https://policy.umn.edu/hr/hiring-appc> [<https://archive.is/cOrKR>] [accessed on Nov. 12, 2024].

“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 UMN receives federal funds, it is subject to Title VI.<sup>13</sup>

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 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 UMN sponsors, promotes and administers the BIPOC Design Justice Initiative, it violates Title VI by doing so.

And, because UMN is a public university, its sponsorship and promotion of the BIPOC Design Justice Initiative 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 Initiative 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. 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 UMN 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). UMN cannot demonstrate that restricting eligibility for the Initiative based on race, skin color or ethnicity serves any legitimate governmental purpose, let alone an extraordinary one.

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<sup>13</sup> See <https://www.usaspending.gov/recipient/75c0ae0f-6a5f-aead-72df-d28c71c0d348-C/latest> [<https://archive.ph/X1aRk>] [accessed Nov. 12, 2024]; see also Dept. Education Funding, <https://www.usaspending.gov/search/?hash=4cc946e3548bf3ef728d1de05346ce9b> [<https://archive.ph/zggbW/image>] [accessed Nov. 12, 2024]

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).<sup>14</sup> Neither applies here.

And, irrespective of whether the BIPOC Design Justice Initiative furthers a compelling interest, it is not narrowly tailored. *Grutter v. Bollinger*, 539 U.S. 306, 334 (2003) (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- and nationality-based selection criterion is mechanically applied. If applicants are not BIPOC they are subject to restrictions not applicable to BIPOC students. To the extent that any individualized consideration exists, it only applies to distinguish between applicants 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 classifications for the BIPOC Design Justice Initiative apply 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 the UMN for the BIPOC Design Justice Initiative 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.

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<sup>14</sup> 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).

Similarly, the restrictions placed on white students for the BIPOC Design Justice Initiative 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 Design Justice Initiative are presumptively invalid, and in the absence of any compelling government justification for such invidious discrimination, UMN’s use of such criteria violates federal civil rights statutes and constitutional equal protection guarantees.

### **OCR Has Jurisdiction**

OCR has jurisdiction over this complaint. UMN is a public university that received funding from the federal government, including from the U.S. Department of Education.<sup>15</sup> It is therefore liable for violations of Title VI and the Equal Protection Clause, and subject to OCR jurisdiction.<sup>16</sup>

### **The Complaint is Timely**

This complaint is timely brought because it includes allegations of discrimination based on race, color and national origin that occurred within the last 180 days and that are ongoing. Indeed, as demonstrated above, events and programming for the BIPOC Design Justice Initiative for the 2024-25 academic year are still in progress, at least through graduation in May 2025.

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<sup>15</sup> See <https://www.usaspending.gov/recipient/75c0ae0f-6a5f-aead-72df-d28c71c0d348-C/latest> [<https://archive.ph/X1aRk>] [accessed Nov. 12, 2024]; see also Dept. Education Funding, <https://www.usaspending.gov/search/?hash=4cc946e3548bf3ef728d1de05346ce9b> [<https://archive.ph/zggbW/image>] [accessed Nov. 12, 2024].

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

### **Request for Expedited Investigation and Enforcement**

UMN was aware that such BIPOC and students-of-color only programs are unlawful. In May 2023, EPP filed an OCR Complaint regarding another UMN BIPOC program.<sup>17</sup> UMN quickly changed the program to eliminate race- and ethnicity-based eligibility criteria.<sup>18</sup> Among other things, UMN reported to OCR that it had removed “any racial criteria or preference.”<sup>19</sup> Nonetheless, UMN has continued to promote and administer the BIPOC Design Justice Initiative. This repeat offense, in disregard of the clear law laid out to it in the prior complaint, justifies expedited investigation by OCR and remedial action.

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 criteria for the BIPOC Design Justice Initiative are presumptively invalid, and because UMN cannot show any compelling justification for those restrictions, the limitation of this program based on race, color and ethnicity violates federal civil rights statutes and constitutional equal protection guarantees.

The Office for Civil Rights has the power and obligation to investigate the UMN’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 BIPOC Design Justice Initiative based on discriminatory criteria, and ensure that all ongoing and future programming through UMN comports with the Constitution and federal civil rights laws.

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<sup>17</sup> See <https://legalinsurrection.com/wp-content/uploads/2023/09/OCR-Complaint-Univ.-of-Minnesota.pdf>

<sup>18</sup> See e.g. media coverage here, <https://equalprotect.org/case/university-of-minnesota-undergrads-of-color-only-summer-research-program/>

<sup>19</sup> See <https://equalprotect.org/wp-content/uploads/2023/05/U-Minn-OCR-Decision-11-6-23-Dismissing-Case.pdf>

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Respectfully submitted,

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