April 21, 2022

Ms. ReBecca Roloff  
President  
St. Catherine University  
2004 Randolph Avenue  
St. Paul, MN 55105  
broloff@stkate.edu

Sent via email

Re: George Floyd Scholarship

Dear President Roloff:

The Foundation Against Intolerance & Racism is a nonpartisan, non-profit organization dedicated to advancing civil rights and liberties and promoting a common culture based on fairness, understanding, and humanity. We have more than 100 chapters and tens of thousands of members nationwide, including in Minnesota. Our website, fairforall.org, can give you a fuller sense of our identity and activities.

We write in response to an incident report submitted to us through our transparency website, fairtransparency.org. That report, which can be found here, alleges that St. Catherine University has announced a $10,000 George Floyd scholarship available only to a “Black, Indigenous Person of Color (BIPOC) Student”:

According to the university’s provost, the scholarship “is a vital step toward addressing systemic disparities” and an effort to eradicate “racial disparities that are present in our world.”
As an organization committed to pro-human anti-racism, FAIR supports efforts to achieve greater fairness and assist those in need of financial assistance in higher education. We believe, however, that establishing a scholarship based on skin color or ancestry violates Title VI of the Civil Rights Act. That statute provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. §§ 2000d, 2000d-4a(2); see Robinson v. Vollert, 602 F.2d 87, 89 (5th Cir. 1979) (“Title VI prohibits discrimination on account of race, color, or national origin in all programs and activities receiving federal financial assistance”). As a recipient of federal funds, St. Catherine is required to comply with Title VI.

Under Title VI (and the Equal Protection clause from which it is derived), any distinction based on skin color is strictly scrutinized. Gratz v. Bollinger, 539 U.S. 244, 275-6 & n.23 (2003). A racial classification will pass strict scrutiny only if the entity demonstrates (1) it has a “compelling interest” in treating individuals differently based on skin color and (2) the methods to achieve that interest are “narrowly tailored.” Adarand Constr., Inc. v. Pena, 515 U.S. 200, 227 (1995). A policy is not narrowly tailored if a “less restrictive alternative is readily available.” Boos v. Barry, 485 U.S. 312, 329 (1988).


The case of Podberesky v. Kirwan is instructive. There, the University of Maryland established a scholarship solely for students of one skin color, for the stated purpose of remedying statistical disparities in attendance and graduation rates. Podberesky, 38 F.3d 147, 152 (4th Cir. 1994). An ineligible student filed suit, alleging unlawful discrimination. Citing J.A. Croson, the Court of Appeals held that the university was required to produce strong evidence that the university had discriminated in the past, that the past discrimination was connected to the present disparities, and that the scholarship was narrowly tailored to remedy the discrimination. Podberesky, 38 F.3d at 153-4, 158-61. Because the university failed to do so, the Court of Appeals ruled against it. Id. at 162.

St. Catherine appears to have created the George Floyd scholarship for remedial purposes: to “address[] systemic disparities” and “racial disparities that are present in our world.” As established by the Supreme Court in J.A. Croson, Wygant, and Bakke, however, disparities in the world cannot legally justify remedial discrimination. St.
Catherine has identified no past discrimination it committed, nor any deleterious present effects at the university that were caused by past discrimination. Even if the scholarship’s purpose were to diversify the student body, it would still be impermissible because “BIPOC” identity is not a “plus” factor but a necessary precondition for eligibility.¹

Administering a scholarship that excludes students based on skin color also appears to conflict with St. Catherine’s admirable core principles:

We work to create a community and a world in which race, ethnicity, nationality, socioeconomic status, ability, gender, gender identity and expression, sexual orientation, religion, and other forms of human difference are neither sources of prejudice nor barriers to equal access, opportunity, representation, and agency. Human diversity is a strength.

It is generous and thoughtful of St. Catherine to offer scholarships based on economic need or other criteria unrelated to immutable traits. Under Title VI, however, it may not do so based on skin color or ancestry. We urge the university to open the scholarship to any deserving student without regard to their immutable traits. We also believe that such a gesture would demonstrate St. Catherine’s commitment to non-discrimination and equal access.

We would like to give the university an opportunity to respond. Please let us know within the next week if you intend to do so.

Very truly yours,

Letitia Kim

Managing Director of the Legal Network
Foundation Against Intolerance & Racism

¹ It is irrelevant that the scholarship is privately endowed. Federal regulations clarify that a recipient of federal funds may not determine financial aid or other benefits “directly or through other arrangements” that “have the effect of subjecting individuals to discrimination because of their race, color, or national origin.” 34 C.F.R. § 100.3(b)(2) (emphasis added).