



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”:

2022-2023 George Floyd Memorial Endowed Scholarship
St. Catherine University

The history and values of St. Catherine university and our founders inspire a response to the call for racial justice brought forth by the death of George Floyd, Jr on May 25, 2020 in Minneapolis, Minnesota. The George Floyd Memorial Endowed Scholarship Fund is an answer to this call and fuels St. Kate's Mission of education as an expression of social justice. The George Floyd Memorial endowed scholarship fund is a prestigious annual scholarship intended to support a current Black, Indigenous Person of Color, (BIPOC) Student. This scholarship supports a student pursuing a degree at St. Catherine, an institution that prepares them for a career to lead and promote social justice specifically related to racism.

A \$10,000 tuition-based scholarship will be awarded to a recipient during the 2022-2023 academic year. Applications are open for BIPOC students from any field of study across all three colleges.

Eligible George Floyd Scholarship applicants must meet all the following criteria:

the student must be pursuing a degree which prepares her/him for a career in social justice, specifically in the area of racial justice

be enrolled at St. Catherine University as at least a part-time student (6 credits per semester) during all or part of the 2022-2023 academic year;

Preference given to BIPOC student nominees.

DEADLINE for NOMINATIONS: APRIL 18, 2022

[LINK TO NOMINATION FORM](#)

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 Supreme Court has recognized only two interests compelling enough to justify racial classifications. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist.*, 551 U.S. 701, 720-3 (2007). The first is to achieve student diversity in higher education. *Grutter v. Bollinger*, 539 U.S. 306, 328-33 (2003). The second is to remedy the effects of past discrimination. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 498-504 (1989). For discrimination that is intended to achieve diversity, a university may consider skin color only if it is a “plus” factor among many other criteria and the applicants are still evaluated holistically. *Grutter*, 539 U.S. at 328-33; *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 317 (1978) (Powell, J., plurality opinion). For remedial discrimination, the entity must produce “a strong basis in evidence” of present ill effects caused by specific acts of past discrimination in the industry and locality at issue. *J.A. Croson*, 488 U.S. at 492, 498-500. Amorphous claims of general or societal discrimination are insufficient. *Wygant v. Jackson Board of Educ.*, 476 U.S. 267, 276 (1986); *Bakke*, 438 U.S. at 307-10.

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 legal ly 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).