October 2, 2024

FOUNDATION AGAINST INTOLERANCE & RACISM

Ivor Benjamin, MD, FAHA, FACC, Program Director
Joy Lincoln, PhD, Program Director
Malika Siker, MD, Program Director
ASPIRE & SURE Programs, Cardiovascular Center
Medical College of Wisconsin

Sent via email

Re: Unlawful discrimination in MCW's ASPIRE and SURE Programs

Dear Drs. Benjamin, Lincoln, and Siker:

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

We write in response to a report submitted to us about the Medical College of Wisconsin's ("MCW") Advancing Student Potential for Inclusion with Research Experiences (ASPIRE) and Supporting Undergraduate Research Experiences (SURE) programs. Based on the information reported to us and our independent research, we understand that MCW's ASPIRE and SURE programs are 10-week summer programs for undergraduate students to gain experience in cardiovascular research and other science and healthcare-related fields. The ASPIRE and SURE Programs provide students with extraordinary benefits, including a generous stipend, free housing, and paid transportation. Unfortunately, application to the ASPIRE and SURE Programs is not open to all, as certain students are barred from applying based on their race, skin color, or ethnicity. Both programs are explicitly for "underrepresented groups in science and medicine including individuals who belong to ethnic/racial minorities, Hmong, who are differently-abled of any race or ethnicity, and/or who come from a disadvantaged background of any race or ethnicity." In other words, the application is restricted to only: 1) students from an "underrepresented" ethnic or racial group; or 2) students from any ethnic or racial group who also are either "differently-abled" or from a "disadvantaged background."

As an organization committed to pro-human anti-racism, FAIR supports efforts to promote greater fairness in educational opportunities and to assist those in need of financial assistance for higher education. We believe, however, that offering summer training programs that exclude certain applicants based on race or ethnicity 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 Regents of University of California v. Bakke*, 438 U.S. 265, 266 (1978). As a recipient of federal funds, MCW is required to comply with Title VI.

Under Title VI, all distinctions based on skin color are "strictly scrutinized" by the courts. *Adarand Constr., Inc. v. Pena*, 515 U.S. 200, 227 (1995). Strict scrutiny "is a searching examination" that is rarely survived. *Fisher v. University of Texas*, 570 U.S. 297, 310 (2013); *Burson v. Freeman*, 504 U.S. 191, 211 (1992). Historically, racial classifications would pass strict scrutiny only if the entity proves it has a "compelling interest" in treating individuals differently based on skin color, and the means used to achieve that interest are "narrowly tailored." *Adarand*, 515 U.S. at 227. A policy is not narrowly tailored if a "less restrictive alternative is readily available." *Boos v. Barry*, 485 U.S. 312, 329 (1988).

Until last summer, the U.S. Supreme Court had recognized two interests compelling enough to justify racial classifications: the first was to achieve student diversity in higher education. *Grutter v. Bollinger*, 539 U.S. 306, 328-333 (2003); the second was to remedy the effects of past discrimination on the part of the entity in question. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 498-504 (1989). However, these typically amorphous goals were struck down by the Supreme Court cases on affirmative action because the Court found that they were "not sufficiently coherent for purposes of strict scrutiny." *Students for Fair Admissions, Inc., v. President and Fellows of Harvard College*, slip op. No. 20–1199, 6 (2023).

The Supreme Court went further in *Students for Fair Admissions* by signaling the beginning of the end for any form of differential treatment based on race, even those that once had a justifiable purpose when it stated: "[e]liminating racial discrimination means eliminating all of it. And the Equal Protection Clause, we have accordingly held, applies without regard to differences of race, of color, or of nationality - it is 'universal in [its] application." *Students For Fair Admission* at 15

(citing *Yick Wo*, 118 U.S. at 369). The Court went on to point out that "'[t]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color.'" *Students* at 15; citing *Regents of Univ. of Cal. v. Bakke, 438 U. S. 265, 289–290.*

It is generous and thoughtful of MCW to offer internship programs based on economic need or other criteria unrelated to immutable traits. Under Title VI, however, it may not offer such an opportunity only to certain students based on their skin color or ethnicity. We urge MCW to open applications for the ASPIRE and SURE programs to all deserving students without regard to their immutable traits. We also believe that such a gesture would demonstrate MCW's commitment to non-discrimination and equal access.

We would like to allow MCW to respond. Please let us know within a week if you intend to do so.

Very truly yours,

Leigh Ann O'Neill

Leigh Ann O'Neill
Director of Legal Advocacy
Foundation Against Intolerance & Racism

cc: John R. Raymond, Sr., MD, President and CEO, Medical College of Wisconsin