



THE BUCKEYE INSTITUTE

March 11, 2024

Cleveland Metro Bar Association
Attn: Matthew D. Besser, President-Elect
1375 East 9th Street, Floor 2
Cleveland, OH 44114
Re: Minority Programs

Dear Mr. Besser:

It has come to our attention that the Cleveland Metro Bar Association is operating a race-based program in violation of federal law. As the Supreme Court recently explained, the Equal Protection Clause and federal civil rights laws apply equally to all races, colors and nationalities. “If both are not accorded the same protection, then it is not equal.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023) (SFFA) (internal citation omitted).

The Cleveland Metro Bar Association has long run the **Cleveland Legal Collaborative**, the Louis Stokes Scholars **Program**, and the **1L (formerly Minority) Clerkship Program**. The Cleveland Legal Collaborative, is “a social justice incubator” that “build[s] a more diverse and inclusive workforce.” The Louis Stokes Scholars Program is only available to students from certain Cleveland area schools and “is administered under the umbrella of the CMBA’s Inclusion & Diversity Committee.” This “Diversity Pipeline Internship Program of the CMBA [is] for minority college students.” Although the Bar Association has changed the name of its Minority Clerkship Program, the program is nonetheless aimed at minority students. “This program offers first-year law students the opportunity to apply for summer clerkships or summer associate positions at law firms, corporate law offices, and government agencies committed to fostering diversity and inclusion. Over the years, this program has engaged over 40 legal employers in northeast Ohio, aiding more than 300 law students in securing valuable clerkship positions” and should be open to all students. *While the sentiments of this program may be laudable, it is inconsistent with federal law.*

42 U.S.C. § 1981 prohibits race discrimination in contracting. It provides that “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.” 42 U.S.C. § 1981(a). This extends to “the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” *Id.* § 1981(b). Further, “[t]he rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.” *Id.* § 1981(c). Section 1981 “is applicable to racial discrimination in private employment against white persons.” *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 287 (1976). And, 42 U.S.C. § 1985(3)

prohibits private conspiracies to deprive individuals of their constitutional and statutory rights. *Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 314 (6th Cir. 2005).

Last year, the United States Supreme Court struck down race-based college admissions policies and reaffirmed “the absolute equality of all citizens of the United States politically and civilly before their own laws.” *SFFA*, 600 U.S. at 201. Notably, the Court also recognized that federal civil-rights statutes prohibiting private entities from engaging in race discrimination apply at least as broadly as the prohibition against race discrimination found in the Equal Protection Clause. *Id.* at 198, n.2. And the Court reiterated that this commitment to racial equality extends to “other areas of life,” such as employment and contracting. *Id.* at 204. The Court powerfully reinforced the principle that all racial discrimination, *no matter the motivation*, is invidious and unlawful: “Eliminating racial discrimination means eliminating all of it.” *Id.* at 206 (emphasis added).

Recently, several lawsuits have successfully challenged minority programs such as the Cleveland Metro Bar Association’s. See Monnay, *Morrison Foerster Changes DEI Fellowship Criteria Amid Lawsuit*, Bloomberg (Sept. 6, 2023); Raymond, *Second Major US Law Firm Changes Diversity Fellowship After Lawsuit*, Reuters (Oct. 6, 2023). We ask that you comply with the race-neutral-principles pronounced by the Supreme Court. To avoid litigation, The Buckeye Institute asks that you answer the following questions by February 23, 2024:

1. Will the Cleveland Metro Bar Association immediately cease and desist from offering the Cleveland Legal Collaborative, the Louis Stokes Scholars Program, the 1L Clerkship Program, or any program like them that discriminates based on race, color, or nationality?
2. Does the Cleveland Metro Bar Association plan to proceed with the Cleveland Legal Collaborative, the Louis Stokes Scholars Program, and the 1L Clerkship Program in 2024?
3. If the Bar Association replaces or changes the programs, will the new or revised programs refrain from asking applicants their race, color, or nationality and from considering race as a factor when making selections?
4. If the new programs will not be strictly race neutral, what role will race, color, or nationality play when making selections?

Thank you in advance for your cooperation.

Sincerely,

David C. Tryon

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