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January 15, 2025

VIA ELECTRONIC MAIL ONLY: OCRComplaint@hhs.gov

Centralized Case Management Operations
U.S. Department of Health and Human Services
Office for Civil Rights
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, D.C. 20201

**RE: Civil Rights Complaint Against Johns Hopkins University
Pursuant to Title VI and the ACA.**

Dear Sirs or Madams:

We represent Do No Harm (“DNH”), a nationwide membership organization that opposes racially discriminatory programs and policies in healthcare and seeks to keep identity politics out of medical education, research, and clinical practice. DNH is comprised of members who are physicians, nurses, other healthcare professionals, students, patients, and policymakers. Through its work and engagement with its members, DNH has become aware of certain education programs provided at Johns Hopkins University that discriminate on the basis of sex and/or race.¹

Although there are a number of examples, this letter highlights five specific examples of sex and/or race discrimination in medical education, training, and scholarship programs “For Minority Students” provided at Johns Hopkins through its School of Medicine: **(1)** the Diversity Council Visiting 4th Year Medical Student Clerkship, **(2)** the Johns Hopkins Department of Dermatology Diversity Clerkship; **(3)** the Orthopaedic Surgery Diversity Scholarship; **(4)** the Visiting Elective Program for Students Underrepresented in Pediatrics; and **(5)** the Plastic & Reconstructive Surgery Underrepresented in Medicine Visiting Elective.² Moreover, John Hopkins has installed an extensive system of “Diversity Councils” and offices that are motivated—at least in part—by an unlawful racial purpose to create,

¹ Johns Hopkins University has a mailing address of 3400 N. Charles Street, Baltimore, MD 21218.

² Johns Hopkins Medicine, Office of Diversity, Inclusion and Health Equity, *Diversity Resources - For Minority Students*, <https://www.hopkinsmedicine.org/diversity/som-diversity-index> (last accessed Jan. 2, 2025). Links to the University’s cited materials have also been archived at <https://archive.ph/>.

implement, and promote these discriminatory programs (among other discriminatory programs and initiatives).

Please consider this letter a formal complaint under Title VI of the Civil Rights Act of 1964 and Section 1557 of the Affordable Care Act (“ACA”).

I. Various medical education, training, and scholarship programs at Johns Hopkins discriminate on the basis of sex and/or race.

A. Plastic & Reconstructive Surgery Underrepresented in Medicine Visiting Elective

The Plastic and Reconstructive Surgery Department at the Johns Hopkins School of Medicine “sponsor[s]” the “Plastic & Reconstructive Surgery Underrepresented in Medicine Visiting Elective” program.³ This program designates eligibility for “medical students from groups underrepresented in medicine as defined by the AAMC.”⁴ According to the Association of American Medical Colleges (“AAMC”), “[u]nderrepresented in medicine” or “URM” **“means those racial and ethnic populations that are underrepresented in the medical profession relative to their numbers in the general population”**—a definition based on balancing by race.⁵

In further defining eligibility for the plastic surgery URM program, Johns Hopkins outlines its particular preferences for certain racial and ethnic groups over others, confirming that the program will provide “support” to “highly qualified fourth-year medical students” who are **“African-American, Hispanic/Latino and American Indian/Alaska Native.”**⁶

Among the program benefits, medical students participating in the plastic surgery URM program will receive “the full breadth of plastic and reconstructive surgery offered at Johns Hopkins Hospital” and “will also partake in all [the same] educational didactics” offered to students enrolled in the “Sub-internship in Plastic Surgery” program, “such as core curriculum, grand rounds, and ... a 10-minute presentation.”⁷ In addition, students in the plastic surgery URM program will receive “strong mentorship” and, “[t]o that end,” will “[b]e assigned a faculty mentor and a resident mentor,” “[h]ave a sit-down meeting with the department chair to discuss career goals, and “[b]e offered opportunities to network with a

³ Johns Hopkins Medicine, Plastic and Reconstructive Surgery Education (Medical Students), *Underrepresented in Medicine Visiting Elective*, “Program Details”, <https://www.hopkinsmedicine.org/plastic-reconstructive-surgery/education/medical-students> (last accessed Jan. 2, 2025).

⁴ *Id.*

⁵ AAMC, Underrepresented in Medicine Definition, <https://www.aamc.org/what-we-do/equity-diversity-inclusion/underrepresented-in-medicine> (last accessed Jan. 2, 2025) (emphasis in original).

⁶ Johns Hopkins Medicine, Plastic and Reconstructive Surgery Education (Medical Students), *Underrepresented in Medicine Visiting Elective* (“Program Details”), <https://www.hopkinsmedicine.org/plastic-reconstructive-surgery/education/medical-students> (last accessed Jan. 2, 2025) (emphasis added).

⁷ *Id.* (“Program Details”).

wide array of Johns Hopkins faculty, house staff and students.”⁸ The program also “provides a stipend to accepted students to help with travel and lodging costs” and waives “the visiting student application fee from the registrar office.”⁹

By all accounts, the plastic surgery URM program appears to be a highly desirable opportunity for medical students hoping to match and practice in plastic surgery and mimics the plastic surgery “sub-internship” experience and application process.¹⁰ However, the plastic surgery URM program limits, recruits, and evaluates candidates on the basis of race. Consequently, candidates who cannot satisfy the program’s racial criterion are either disfavored or lose their eligibility altogether and must find a different, non-URM opportunity.

B. Diversity Council Visiting Fourth-Year Medical Student Clerkship

In similar fashion, the Johns Hopkins Department of Medicine within the School of Medicine hosts the “Diversity Council Visiting Fourth-Year Medical Student Clerkship.”¹¹ As the “Diversity Council of the Department of Medicine” explains it, “[t]he Department of Medicine shares the commitment to diversity espoused by the School of Medicine and Johns Hopkins University, and it views diversity as essential to the Department’s pursuit of excellence in education, patient care, research and addressing health care disparities.”¹²

Consequently, “[i]n view of that commitment, the Director of Medicine and the Diversity Council of the Johns Hopkins University Department of Medicine invites medical students who are from groups underrepresented in medicine, including under-represented minorities and persons from disadvantaged backgrounds, and who intend to pursue a career in internal medicine or its subspecialties, to apply for [their] Visiting Clerkship Program.”¹³

According to the Department of Medicine, “**underrepresented in medicine means,**” once again, “**those racial and ethnic populations that are underrepresented in the medical profession relative to their numbers in the general population**”—the

⁸ *Id.* (“Mentorship Opportunities”).

⁹ *Id.* (“Financial Assistance”).

¹⁰ Throughout its description, the Plastic & Reconstructive Surgery Underrepresented in Medicine Visiting Elective program “refer[s] to the “the sub-internship” interchangeably. *See id.* (pointing candidates and potential candidates to the sub-internship for additional “Program Details” on the plastic surgery URM program and indicating that “[v]isiting sub-internships last four weeks” in the description of “Length” for the plastic surgery URM program).

¹¹ John Hopkins Medicine, Department of Medicine, Education (Medical Students), *Diversity Council Visiting 4th Year Medical Student Clerkship*, <https://www.hopkinsmedicine.org/medicine/education/medical-students>; John Hopkins Medicine, Department of Medicine, Diversity Council Initiatives, *Visiting 4th Year Medical Student Clerkship*, <https://www.hopkinsmedicine.org/medicine/faculty-staff/diversity/initiatives> (last accessed Jan. 2, 2025).

¹² John Hopkins Medicine, Department of Medicine, Diversity Council Initiatives, *Visiting 4th Year Medical Student Clerkship*, <https://www.hopkinsmedicine.org/medicine/faculty-staff/diversity/initiatives> (last accessed Jan. 2, 2025).

¹³ *Id.*

race-based AAMC definition of “URM” that the Department of Medicine, its the Diversity Council, and the Johns Hopkins University School of Medicine all “follow.”¹⁴

Among program benefits, this URM clerkship “exposes fourth-year [URM students] ... to career opportunities available in an academic medical center.”¹⁵ In addition, “[a] stipend is provided on a highly competitive basis,” and participants receive “an assigned faculty mentor, exposure to research programs, ... service learning opportunities through community outreach programs[,] and assistance in preparing for residency interviews.”¹⁶

Unfortunately, the URM program’s race-based balancing considerations and preferences import an unequal treatment of individuals on the basis of race, foreclosing the opportunity for candidates to compete on equal footing for the clerkship—if not altogether barring eligibility for some, who must then find a different, non-URM program.^{17, 18}

C. Johns Hopkins Orthopaedic Surgery Diversity Scholarship

Likewise, the Department of Orthopaedic Surgery at Johns Hopkins School of Medicine “invites medical students who are women or members of underrepresented communities and are interested in pursuing a career in orthopaedic surgery to apply” to the “Orthopaedic Surgery Diversity Scholarship” “for their fourth-year medical student

¹⁴ Johns Hopkins Medicine, Department of Medicine, *Diversity Council of the Department of Medicine*, <https://www.hopkinsmedicine.org/medicine/faculty-staff/diversity/>; AAMC, Underrepresented in Medicine Definition, <https://www.aamc.org/what-we-do/equity-diversity-inclusion/underrepresented-in-medicine> (last accessed Jan. 2, 2025) (emphasis in original).

¹⁵ John Hopkins Medicine, Department of Medicine, Education (Medical Students), *Diversity Council Visiting 4th Year Medical Student Clerkship*, <https://www.hopkinsmedicine.org/medicine/education/medical-students> (last accessed Jan. 2, 2025).

¹⁶ John Hopkins Medicine, Department of Medicine, Diversity Council Initiatives, *Visiting 4th Year Medical Student Clerkship*, <https://www.hopkinsmedicine.org/medicine/faculty-staff/diversity/initiatives> (last accessed Jan. 2, 2025).

¹⁷ See John Hopkins Medicine, Department of Medicine, Education (Medical Students), <https://www.hopkinsmedicine.org/medicine/education/medical-students> (last accessed Jan. 2, 2025) (listing available education and training experiences for medical students).

¹⁸ Despite the program’s statements “welcoming all students, regardless of race or ethnicity,” given Johns Hopkin’s explicit recruitment priority—which specifically “invites students who are from groups underrepresented in medicine [URM]”—against the University’s race-based definition of URM and focus on racial diversity, there can be little doubt that the evaluative processes for this URM clerkship are likewise infected with race-based considerations. Indeed, Johns Hopkins’ brief “welcoming” statement is reduced to nothing more than lip service in an unpersuasive attempt to mask racial discrimination given a URM racial balancing scheme that Johns Hopkins pursues and implements at every level of its organization through numerous diversity councils and offices. *See infra* § I.F; *see also e.g., Preston v. Wis. Health Fund*, 397 F.3d 539, 542 (7th Cir. 2005) (courts are not “surpris[ed]” when “pressure from ... corporate superiors imbued with belief in ‘diversity’ to increase the proportion of [a minority population]” causes discrimination).

clerkship.”¹⁹ This “[o]ne-month clinical clerkship” includes “[m]entorship by Department of Orthopaedic Surgery faculty” and “financial assistance” totaling \$1,000 (a \$500 registration fee waiver and a \$500 stipend).²⁰ Applications must be submitted to “[t]he Orthopaedic Surgery Diversity Council.”²¹

Given the status of Johns Hopkins as a top-ranked medical school,²² and findings indicating that the “completion of an orthopaedic clerkship” is “one of the most important determinants of orthopaedic resident selection,” participation in a John Hopkins orthopaedic surgery clerkship is undoubtedly highly desirable.²³

However, the URM clerkship in orthopaedic surgery is provided on the basis of race and sex to certain students: “**Clerkships are *only* available to medical students [who meet certain academic criteria] and who are female or who meet the AAMC definition of underrepresented minority groups” based on race or ethnicity.**²⁴ Accordingly, candidates who are not deemed to have met the program’s race or sex criteria lose eligibility altogether.

D. Johns Hopkins Department of Dermatology Diversity Clerkship Award

The Department of Dermatology at Johns Hopkins School of Medicine also offers several medical education and training opportunities, including introductory clerkships for

¹⁹ Johns Hopkins Medicine, *Orthopaedic Surgery Education, Diversity Scholarship*, <https://www.hopkinsmedicine.org/orthopaedic-surgery/education/scholarships> (last accessed Jan. 2, 2025).

²⁰ *Id.*

²¹ Johns Hopkins Medicine, *Johns Hopkins Orthopaedic Surgery - Diversity Scholarship* (flyer), <https://www.hopkinsmedicine.org/-/media/orthopaedic-surgery/documents/flyers/ortho-diversity-scholarship-2024.pdf>, (last accessed Jan. 2, 2025).

²² *E.g.*, Johns Hopkins Medicine, *Johns Hopkins School of Medicine (Home)*, <https://www.hopkinsmedicine.org/som/> (“The Johns Hopkins University School of Medicine consistently ranks among the nation’s very best in education.”) (last accessed Jan. 2, 2025).

²³ See K. Baldwin, et al., *Are Away Rotations Critical for a Successful Match in Orthopaedic Surgery?*, Clin. Orthop. & Related Research 467, 3340–45 (2009), <https://doi.org/10.1007/s11999-009-0920-9> (last accessed Jan. 2, 2025); see also V.H. Martinez, et al., *The Competitiveness of Orthopaedic Surgery Residency Programs: A Twenty-year Analysis Utilizing a Normalized Competitive Index*, Surgery in Practice and Science, Vol. 12 (March 2023), <https://doi.org/10.1016/j.sipas.2023.100155> (indicating that “matching” to an orthopaedic surgery residency program has become significantly more competitive over the past twenty years with applications doubling and match rates remaining relatively unchanged) (last accessed Jan. 2, 2025).

²⁴ Johns Hopkins Medicine, *Orthopaedic Surgery Education, Diversity Scholarship*, <https://www.hopkinsmedicine.org/orthopaedic-surgery/education/scholarships> (last accessed Jan. 2, 2025) (emphasis added); *supra* §§ I.A, B (defining “URM” on the basis of race and ethnicity to determine who is underrepresented and eligible for clinical education and training opportunities).

upperclassmen medical students.²⁵ These one-month clinical experiences permit medical students to “spend time exclusively at the Johns Hopkins facilities (Outpatient Center, Greenspring Station, Harriet Lane Pediatrics Center and Johns Hopkins Hospital Dermatology consult service)” and are “excellent opportunit[ies] for students to interact with different types of patients and to be exposed to a wide range of skin problems.”²⁶

However, not all dermatology clerkships are available to students equally without regard to race. As Johns Hopkins explains, the “Johns Hopkins School of Medicine and the Ethnic Skin Program” “proud[ly]” provide annual “Johns Hopkins Department of Dermatology Diversity Clerkship Award[s]” “to medical students who are considered underrepresented in dermatology.”²⁷ The award also allots a \$1,500 stipend to successful applicants “to help offset the cost of completing a 4-week rotation through the dermatology department.”²⁸

The diversity clerkship’s “Eligibility Criteria” reference the same race-based “URM” requirement: suitable candidates “must be “3rd or 4th [year] underrepresented medical student[s] (URM)” from “an accredited medical school in the United States” and have “an interest in completing a residency in dermatology.”²⁹ Preference may also be given to qualified URM candidates “noting a financial hardship, for whom completing an away rotation would otherwise be difficult.”³⁰

Applications for the Dermatology Diversity Clerkship Award “are accepted on a rolling basis” between three and five months in advance of a candidate’s anticipated rotation date.³¹ Among required “components of the application,” medical students must include their “headshot” photo.³² Thus, once again, if a medical student does not belong to a racial group “considered [to be] underrepresented” “relative to ... the general population,” the student is disfavored.³³

²⁵ Johns Hopkins Medicine, Dermatology Education (Medical Students), <https://www.hopkinsmedicine.org/dermatology/education/medical-students> (last accessed Jan. 2, 2025).

²⁶ *Id.*

²⁷ Johns Hopkins Medicine, Dermatology Education (Medical Students), *Johns Hopkins Department of Dermatology Diversity Clerkship Award*, <https://www.hopkinsmedicine.org/dermatology/education/medical-students#award> (last accessed Jan. 2, 2025).

²⁸ *Id.*

²⁹ *Id.*; see also *supra* §§ I.A, B (defining “URM” on the basis of race and ethnicity to determine who is underrepresented and eligible for clinical education and training opportunities).

³⁰ Johns Hopkins Medicine, Dermatology Education (Medical Students), *Johns Hopkins Department of Dermatology Diversity Clerkship Award*, <https://www.hopkinsmedicine.org/dermatology/education/medical-students#award> (last accessed Jan. 2, 2025).

³¹ *Id.*

³² *Id.*

³³ *Id.*; *supra* §§ I.A, B (defining “URM” on the basis of race and ethnicity to determine who is underrepresented and eligible for clinical education and training opportunities).

E. Johns Hopkins Visiting Elective Program to Promote Diversity, Equity, and Inclusion in Pediatric Healthcare / Visiting Elective Program for Students Underrepresented in Pediatrics

Similarly, Johns Hopkins, through its “Johns Hopkins Harriet Lane Pediatric Residency Training Program,” provides the “Visiting Elective Program for Students Underrepresented in Pediatrics”—also referred to as the “Johns Hopkins Visiting Elective Program to Promote Diversity, Equity, and Inclusion in Pediatric Healthcare.”³⁴ This clinical program is purposed to “give students an opportunity to experience first-hand [Johns Hopkins’] institutional and departmental commitment to diversity, equity, and inclusion” while offering a \$2,500 stipend “to help defray the cost of an away rotation.”³⁵ Applications are accepted “annually” “on a rolling basis” between February 1 and June 1.³⁶

To be eligible for the Visiting Elective Program for Students Underrepresented in Pediatrics, medical students must meet certain interest and academic criteria.³⁷ In addition, although the “Program Description” begins to indicate that “all students, regardless of race or ethnicity,” are welcome to participate, the description ends with an asterisked reference that undercuts the original invitation in furtherance of a more exclusive one.³⁸ Recycling, once again, the AAMC’s definition of URM, Johns Hopkins tells applicants and prospective applicants who the program is really looking for: **“Applicants from backgrounds underrepresented in medicine are encouraged to apply! ... Underrepresented in medicine means those racial and ethnic populations that are underrepresented in**

³⁴ In or around December 2022, Johns Hopkins made certain updates to its Visiting Elective Program for Students Underrepresented in Pediatrics, including updates to the name of the program and the removal of certain references to specific racial and ethnic minority groups deemed at that time to be “underrepresented” for the purposes of the program. See U.S. Dept. of Ed. OCR Complaint No. 03-22-2198 (Dec. 12, 2022). However, these superficial changes were *neither* comprehensive, *nor* do they comply with anti-discrimination law under the ACA and Title VI. See Johns Hopkins Medicine, *Office of Diversity, Inclusion and Health Equity, Diversity Resources For Minority Students*, <https://www.hopkinsmedicine.org/diversity/som-diversity-index> (continuing to reference the “Visiting Elective Program for Students Underrepresented in Pediatrics” “[f]or [m]inority [s]tudents”); Johns Hopkins Medicine, Pediatric Residency Program, *Pediatric Diversity, Equity, Inclusion, and Advocacy Council*, <https://www.hopkinsmedicine.org/residencies/pediatric-residency-program/diversity> (expressing the “excite[ment]” of the Johns Hopkins Pediatric Diversity and Inclusion Council “to welcome medical students who are underrepresented in pediatrics to apply for our Visiting Elective Program for Students Underrepresented in Pediatrics”); *cf.* Johns Hopkins Medicine, Pediatric Residency Program, *Johns Hopkins Visiting Elective Program to Promote Diversity, Equity, and Inclusion in Pediatric Healthcare*, <https://www.hopkinsmedicine.org/residencies/pediatric-residency-program/diversity/visiting-elective-program> (last accessed Jan. 2, 2025); *see also infra* n.41.

³⁵ Johns Hopkins Medicine, Pediatric Residency Program, *Johns Hopkins Visiting Elective Program to Promote Diversity, Equity, and Inclusion in Pediatric Healthcare*, <https://www.hopkinsmedicine.org/residencies/pediatric-residency-program/diversity/visiting-elective-program> (last accessed Jan. 2, 2025).

³⁶ *Id.*

³⁷ *See id.*

³⁸ *Id.*

the medical profession relative to their numbers in the general population.”³⁹ The below screenshot depicts Johns Hopkins’ special invitation to certain medical students on the basis of race and ethnicity for the Visiting Elective Program for Students Underrepresented in Pediatrics.

*Applicants from backgrounds underrepresented in medicine are encouraged to apply! According to the AAMC “Underrepresented in medicine means those racial and ethnic populations that are underrepresented in the medical profession relative to their numbers in the general population.”

Johns Hopkins’ special interest in candidates of certain racial and ethnic backgrounds for this program is reinforced by the program’s repeated statements regarding those “institutional and departmental” “values” and “commitment” to DEI that are shared by the “[pediatric] residency training program, the Department of Pediatrics, and the School of Medicine.”⁴⁰ In turn, these strong affirmations, coupled with the program’s attention to candidate race and ethnicity, also indicate (1) that Johns Hopkins continues to harbor correspondingly strong preferences for certain candidates on the basis of race, and (2) that the program’s recruitment, application, and evaluation processes remain infected by race-based considerations.

Consequently, whether the program is called the “Visiting Elective Program for Students Underrepresented in Pediatrics,” or the “Johns Hopkins Visiting Elective Program to Promote Diversity, Equity, and Inclusion in Pediatric Healthcare”—and regardless of whether the program publicly lists its specifically preferred racial groups or instead recruits for racial “diversity” more generically and/or applies such racial preferences more discreetly—this pediatrics URM program continues to use and prioritize race-based considerations and is motivated by a racial purpose to institute racial balance in hopes of correcting purported racial “underrepresent[ation].”⁴¹

F. Discriminatory Diversity Councils and Offices across Johns Hopkins

Johns Hopkins implements the foregoing discriminatory “diversity” programs (among others) through an expansive system of “Diversity Councils across Johns Hopkins

³⁹ *Id.* (emphasis added).

⁴⁰ *Id.*

⁴¹ The above-referenced 2022 ED-OCR response, while dismissing the complaint concerning this program, did *not* discuss any of these issues. *See supra* n.34.

Medicine.”^{42, 43} These “Diversity Councils ... represent the Office of Diversity, Inclusion and Health Equity at each entity” throughout the medical school and the John Hopkins medical campus—to name just a few, “Bayview Medical Center,” Johns Hopkins Children’s Center,” “Johns Hopkins Hospital,” and “Johns Hopkins University School of Medicine.”⁴⁴ Given the mission and reach of this Office, and the sampling of discriminatory medical education programs described above, it is difficult to image that such a top-down approach resulting in racial discrimination would be confined to the foregoing diversity programs or even to the medical school.⁴⁵

As Johns Hopkins explains, the Office of Diversity, Inclusion and Health Equity is purposed, in part, “to recruit, promote, retain, and engage those underrepresented in

⁴² Johns Hopkins Medicine, Office of Diversity, Inclusion and Health Equity, *About Us – Diversity Councils*, <https://www.hopkinsmedicine.org/diversity/about-us/diversity-council> (last accessed Jan. 2, 2025); *see also infra* n.45.

⁴³ “Johns Hopkins Medicine” is a registered trade name owned by, and representing the “blended governance structures” of, John Hopkins University and John Hopkins Health System entities. *E.g.*, Johns Hopkins University, Governance, *Relationship between JHU & JHM*, <https://trustees.jhu.edu/relationship-between-jhu-jhm/> (last accessed Jan. 2, 2025); Maryland Business Express – Business Entity Search, <https://egov.maryland.gov/BusinessExpress/EntitySearch>.

⁴⁴ Johns Hopkins Medicine, Office of Diversity, Inclusion and Health Equity, *About Us – Diversity Councils*, <https://www.hopkinsmedicine.org/diversity/about-us/diversity-council> (last accessed Jan. 2, 2025) (indicating “Diversity Councils” for numerous Johns Hopkins entities throughout the medical school and the John Hopkins medical campus). *See, e.g.*, Johns Hopkins Medicine, Orthopaedic Surgery, Education, *Diversity and Inclusion in Our Department*, <https://www.hopkinsmedicine.org/orthopaedic-surgery/education/diversity> (last accessed Jan. 2, 2025) (describing the medical school’s department-specific “Diversity Council for the Department of Orthopaedic Surgery” and prompting readers to “Learn more about Diversity Councils” by accessing a hyperlink directing to Johns Hopkins’ Office of Diversity, Inclusion and Health Equity).

⁴⁵ Indeed, various other Johns Hopkins programs and initiatives indicate a similar focus on, and prioritization of, race-based “diversity” that is motivated by a desire to institute racial balance in hopes of correcting purported racial underrepresentation—for example, to name just a few examples: (1) the “[Achievers Award Program](#)” advanced by the Johns Hopkins Office of Diversity, Inclusion and Health Equity to “recognize[] and highlight[] underrepresented minorities across Johns Hopkins Medicine who exemplify excellence and exhibit our Johns Hopkins Medicine core values” and who “[s]elf-identif[y]” as a member of a “celebrated” “heritage group”; (2) the “[Diversity Resources for Current Students](#)” promoted by the School of Medicine’s Biochemistry, Cellular and Molecular Biology (BCMB) Graduate Program, which includes a list of “Funding Opportunities for URM Students” among other “Resources/Organizations committed to diversity and inclusion”; (3) the Johns Hopkins Bloomberg School of Public Health’s “[Committing to Inclusion, Diversity, Anti-Racism and Equity \(IDARE\) Efforts](#),” which implemented priorities to “increase our capacity to recruit, retain, and advocate for underrepresented students at our School,” including “increas[ing] the share of professorial and non-professorial track faculty that come from historically underrepresented minority (URM) communities” and instituting an annual “staff salary equity ... adjustment”; (4) Johns Hopkins University’s “[Kickstart Kit](#),” which provides “resources” to “first-gen and underrepresented minority students,” including “DEI and URM students”; and (5) the “[Vivien Thomas Scholars Initiative](#),” which seeks to “address historic underrepresentation in STEM” through the addition of “permanent funding to add a sustained cohort of approximately 100 new slots for diverse PhD students in [the University]’s more than 30 STEM programs.”

medicine, science, nursing, and healthcare administration” to “achieve health equity.”⁴⁶ And there are “many programs in place across all levels of our organization to ensure support for underrepresented communities.”⁴⁷ Here, “underrepresented communities” are, once again, defined along the lines of race and ethnicity and specifically include the following listed groups: “Alaska[n] Native,” “Asian-Pacific Islander,” “Black/African American,” “Hispanic/Latino,” “Native American,” “Native Hawaiian,” and individuals who are “[o]ne or more of the [listed] racial or ethnic groups.”⁴⁸

Pursuant to these race-based notions of underrepresentation and diversity, the Office of Diversity, Inclusion and Health Equity’s “Diversity councils ... help foster diversity, inclusion and cultural competence on a local level.”⁴⁹ Indeed, “Diversity Councils implement diversity goals and best practices and ensure that Johns Hopkins entities fulfill the mission of diversity, inclusion, [and] health equity”—a pledge that Johns Hopkins University has, likewise, described as a work in progress to “confront disparities,” “dismantle systemic racism, advance equity, and increase diverse representation at Johns Hopkins.”⁵⁰ For example, to “realiz[e] [its] promise,” Johns Hopkins University “charged [all 26 of its academic and administrative divisions] with developing diversity, equity, and inclusion-related goals” and oversees, monitors, and updates the attendant “implementation process.”⁵¹ This process has yielded numerous goals and resulting initiatives that are purposed to institute racial balancing and that discriminate on the basis of race (among other protected characteristics).⁵²

⁴⁶ Johns Hopkins Medicine, Office of Diversity, Inclusion and Health Equity, <https://www.hopkinsmedicine.org/diversity> (last accessed Jan. 2, 2025).

⁴⁷ Johns Hopkins Medicine, Office of Diversity, Inclusion and Health Equity, *Support for Underrepresented Communities*, <https://www.hopkinsmedicine.org/diversity/support-for-underrepresented-communities> (last accessed Jan. 2, 2025).

⁴⁸ *Id.* (emphasis added).

⁴⁹ Johns Hopkins Medicine, Office of Diversity, Inclusion and Health Equity, *About Us – Overview*, <https://www.hopkinsmedicine.org/diversity/about-us> (last accessed Jan. 2, 2025).

⁵⁰ Johns Hopkins Medicine, Office of Diversity, Inclusion and Health Equity, *About Us – Diversity Councils*, <https://www.hopkinsmedicine.org/diversity/about-us/diversity-council>; John Hopkins University, Diversity at JHU, *Our Commitment*, <https://diversity.jhu.edu/our-commitment/> and <https://diversity.jhu.edu/our-commitment/a-letter-from-president-daniels-and-provost-kumar/> (last accessed Jan. 2, 2025).

⁵¹ John Hopkins University, Diversity at JHU, *Our Commitment – Roadmap Goal Progress*, <https://diversity.jhu.edu/our-commitment/roadmap-goal-progress/>; John Hopkins University, Diversity at JHU, *Our Commitment – Division and Unit Roadmap Goals*, <https://diversity.jhu.edu/divisional-roadmap-goals/>.

⁵² *Id.* (listing goals by division). For example, the School of Medicine has aimed to “[i]ncrease diverse faculty leadership representation by individuals from underrepresented in medicine and science.” *Id.* Likewise, “[t]he Carey Business School will increase the representation of faculty from underrepresented racial/ethnic groups and number of faculty who are women.” *Id.* Meanwhile, the Krieger School of Arts and Sciences has committed to “implement[ing] a comprehensive and targeted recruitment strategy for graduate students from underrepresented racial/ethnic groups (URGs).” *Id.* See also *supra* n.45.

Following suit, the Johns Hopkins University School of Medicine and its departmental “Diversity Councils” reflect and implement a mission focused on—at least in part—racially-motivated policies and initiatives in conformity with Johns Hopkins’ broader diversity offices. Indeed, the medical school states that it “considers diversity as one of the core components of medical education” and is “committed to ... recruitment and retention of a diverse student body” and “sponsoring activities to increase diversity” for racial minority students.⁵³

Building on these “diversity” objectives, the departmental levels of the medical school “share[] the commitment to diversity espoused by the School of Medicine and Johns Hopkins University.”⁵⁴ For example, the Department of Medicine is “mission[ed]” “to promote increased recruitment, retention, and advancement of faculty, fellows, and residents from groups under-represented in medicine.”⁵⁵ Applying a race-based URM focus, “the Department of Medicine and the Diversity Council continuously examine approaches to recruit, retain, engage, and fundamentally value faculty and trainees who are under-represented in medicine.”⁵⁶ In addition to the aforementioned “Visiting 4th Year Medical Student Clerkship,” the Diversity Council of the Department of Medicine also proudly advances (among other things), a “Visiting Professorship in Diversity,” which “includes opportunities for the department’s leadership to meet with the honoree and the minority faculty to discuss” what Johns Hopkins refers to as minority-related issues in academic medicine.⁵⁷

Likewise, the medical school’s Pediatric Diversity, Equity, Inclusion, and Advocacy Council is also highly transparent about its intention “to promote diversity within our department,” as it “strive[s] to have our department better reflect the demographics of the community we serve.”⁵⁸ Professing a “dedicat[ion] to serving those who belong to underrepresented in medicine, sexual and gender minority, disabled and/or any historically

⁵³ Johns Hopkins Medicine, Office of Diversity, Inclusion and Health Equity, *Diversity Resources - For Minority Students*, <https://www.hopkinsmedicine.org/diversity/som-diversity-index> (last accessed Jan. 2, 2025) (providing various opportunities “For Minority Students” that prioritize certain candidates on the basis of race and other protected characteristics).

⁵⁴ *E.g.*, John Hopkins Medicine, Department of Medicine, *Diversity Council Initiatives*, <https://www.hopkinsmedicine.org/medicine/faculty-staff/diversity/initiatives> (last accessed Jan. 2, 2025).

⁵⁵ John Hopkins Medicine, Department of Medicine, *Diversity Council of the Department of Medicine*, <https://www.hopkinsmedicine.org/medicine/faculty-staff/diversity> (last accessed Jan. 2, 2025).

⁵⁶ *See, e.g., id.* (defining “URM” on the basis of race and ethnicity to determine who is underrepresented and eligible for clinical education and training opportunities); John Hopkins Medicine, Department of Medicine, *Diversity Council Initiatives*, <https://www.hopkinsmedicine.org/medicine/faculty-staff/diversity/initiatives> (last accessed Jan. 2, 2025).

⁵⁷ John Hopkins Medicine, Department of Medicine, *Diversity Council Initiatives*, <https://www.hopkinsmedicine.org/medicine/faculty-staff/diversity/initiatives> (last accessed Jan. 2, 2025); *see also supra* § I.B.

⁵⁸ Johns Hopkins Medicine, The Harriet Lane Pediatric Residency Program, *Pediatric Diversity, Equity, Inclusion, and Advocacy Council*, <https://www.hopkinsmedicine.org/residencies/pediatric-residency-program/diversity> (last accessed Jan. 2, 2025).

marginalized communities,” the council also champions a race-based URM mission and is particularly “committed to” “[t]he recruitment, retention and advancement of underrepresented physicians within the Department of Pediatrics.”⁵⁹ As part of its efforts, the council “participate[s] in various recruitment efforts” and encourages “medical students who are underrepresented” to apply for the aforementioned “Visiting Elective Program for Students Underrepresented in Pediatrics.”^{60, 61}

In short, throughout its university and medical campus, Johns Hopkins has institutionalized an extensive system of diversity offices and councils missioned and purposed—at least in part—to “fundamentally value” individuals on the basis of race (among other protected characteristics) and to implement goals and initiatives that are racially discriminatory and designed to implement racial balancing. In turn, this discriminatory mission filters down to the medical school and its departmental components, which likewise *consider and prioritize* race (and other protected characteristics) when providing medical education, training, and scholarship opportunities and benefits (as exemplified and discussed *supra* §§ I.A–E). Given the broader mission and design in play, other similar implementations of discriminatory practices throughout Johns Hopkins are not surprising.⁶²

II. Present and Ongoing Discrimination at Johns Hopkins

Given the continued physician and healthcare worker shortage across America, Johns Hopkins’ efforts to help educate, train, and support up-and-coming talent are commendable.⁶³ However, that is *not quite* its goal with respect to the above-discussed medical education, training, recruitment, and scholarship programs.⁶⁴ Instead, here, Johns Hopkins offers

⁵⁹ *Id.*; Johns Hopkins Medicine, Pediatric Residency Program, *Johns Hopkins Visiting Elective Program to Promote Diversity, Equity, and Inclusion in Pediatric Healthcare*, <https://www.hopkinsmedicine.org/residencies/pediatric-residency-program/diversity/visiting-elective-program> (last accessed Jan. 2, 2025) (promoting a special focus on race-based URM recruitment for a visiting elective program in pediatrics); *see also supra* § I.E.

⁶⁰ Johns Hopkins Medicine, The Harriet Lane Pediatric Residency Program, *Pediatric Diversity, Equity, Inclusion, and Advocacy Council*, <https://www.hopkinsmedicine.org/residencies/pediatric-residency-program/diversity> (last accessed Jan. 2, 2025); *see also supra* § I.E.

⁶¹ The medical school’s “Diversity Councils” extend beyond those of the Department of Medicine and pediatrics department. For instance, “[t]he Diversity Council for the Department of Orthopaedic Surgery ... promotes diversity goals and best practices,” “provides resources for residents and students,” and “organizes outreach events”—including the Department’s discriminatory Diversity Scholarship. *Supra* § I.C; Johns Hopkins Medicine, Orthopaedic Surgery, Education, *Diversity and Inclusion in Our Department*, <https://www.hopkinsmedicine.org/orthopaedic-surgery/education/diversity> (last accessed Jan. 2, 2025).

⁶² *See* n.45 & n.52.

⁶³ *See, e.g.*, AAMC, *New AAMC Report Shows Continuing Projected Physician Shortage*, (Mar. 21, 2024), <https://www.aamc.org/news/press-releases/new-aamc-report-shows-continuing-projected-physician-shortage>; Kristy Wang, *The Hidden Health Crisis: America’s Physician Shortage is Slowly Worsening*, Columbia Political Review (February 12, 2024), <http://www.cpreview.org/articles/2024/2/the-hidden-health-crisis-americas-physician-shortage-is-slowly-worsening> (last accessed Jan. 2, 2025).

⁶⁴ *See supra* § I.

specific programs “For Minority Students,” which intentionally limit candidate pools through the imposition of sex and/or race-based eligibility considerations to evaluate candidate worthiness.⁶⁵ At every level, Johns Hopkins has installed a system of diversity offices and counsels, purposed to channel resources, time, and employees to create, implement, operate, support, promote, and otherwise advance these discriminatory programs.⁶⁶

Sex and/or race discrimination are defining features of the “Diversity Council Visiting Fourth-Year Medical Student Clerkship,” the “Johns Hopkins Department of Dermatology Diversity Clerkship Award,” the “Orthopaedic Surgery Diversity Scholarship,” the “Visiting Elective Program for Students Underrepresented in Pediatrics,” and the “Plastic & Reconstructive Surgery Underrepresented in Medicine Visiting Elective.”⁶⁷ And this discrimination is present and ongoing, as “application[] ... cycle[s]” close and renew “per academic year” and recruiting activities remain constant for each special diversity program through, at a minimum, Johns Hopkins’ prominent website invitations and promotions.⁶⁸ Moreover, the various “Diversity Councils” and offices at Johns Hopkins ensure that these programs and initiatives (and others like them⁶⁹) remain ever-focused on correcting “underrepresentation” and advancing “diversity” on the basis of race and ethnicity.

III. Johns Hopkins’ discriminatory education, training, and scholarship programs violate Title VI and Section 1557 of the ACA.

As a private healthcare entity and a recipient of federal funding, Johns Hopkins is subject to Section 1557 of the ACA and Title VI of the Civil Rights Act of 1964, which “prohibit[] discrimination on the basis of race, color, national origin, [and] sex.”⁷⁰

⁶⁵ See *id.*; Johns Hopkins Medicine, Office of Diversity, Inclusion and Health Equity, *Diversity Resources - For Minority Students*, <https://www.hopkinsmedicine.org/diversity/som-diversity-index> (last accessed Jan. 2, 2025).

⁶⁶ See *supra* § I; see also *supra* n.45.

⁶⁷ See *supra* § I.

⁶⁸ *E.g.*, Johns Hopkins Medicine, Dermatology Education (Medical Students), *Johns Hopkins Department of Dermatology Diversity Clerkship Award*, <https://www.hopkinsmedicine.org/dermatology/education/medical-students#award>; Johns Hopkins Medicine, Pediatric Residency Program, *Johns Hopkins Visiting Elective Program to Promote Diversity, Equity, and Inclusion in Pediatric Healthcare*, <https://www.hopkinsmedicine.org/residencies/pediatric-residency-program/diversity/visiting-elective-program>; John Hopkins Medicine, Department of Medicine, Diversity Council Initiatives, *Visiting 4th Year Medical Student Clerkship*, <https://www.hopkinsmedicine.org/medicine/faculty-staff/diversity/initiatives> (last accessed Jan. 2, 2025) (last accessed Jan. 2, 2025); see also *supra* §§ I.A–F.

⁶⁹ See, *e.g.*, *supra* n.45.

⁷⁰ 42 U.S.C. § 18116 & 45 C.F.R. §§ 92.1(a), 92.2(a)(1) (prohibiting discrimination on the basis of race and sex); 42 U.S.C. §§ 2000d, 2000d-4a(2)–(4) & 45 C.F.R. §§ 80.1, 80.2 (prohibiting racial discrimination). See *infra* n.73 & n.74.

Section 1557 of the ACA proscribes discrimination against individuals based on race and sex⁷¹ in “any health program or activity, any part of which is receiving Federal financial assistance,” including “Federal financial assistance from the Department [of Health and Human Services]” for (among other things) “[a]ny project, enterprise, venture, or undertaking to ... [p]rovide health education for health care professionals or others,” “[e]ngage in health or clinical research,” or “administer health-related services.”⁷² Moreover, “[a]ll of the operations of any entity principally engaged in the provision or administration of any [such] health projects, enterprises, ventures, or undertakings” are subject to the ACA’s anti-discrimination provisions.⁷³

⁷¹ Under the ACA, “[d]iscrimination on the basis of sex includes ... discrimination on the basis of: ... [s]exual orientation; [g]ender identity; and [s]ex stereotypes.” *E.g.*, 45 C.F.R. § 92.101(2).

⁷² 42 U.S.C. § 18116; 45 C.F.R. §§ 92.1(a), 92.4.

⁷³ *E.g.*, 45 C.F.R. § 92.4; 89 Fed. Reg. 37522, 37542 (May 6, 2024) (“As stated throughout this section, if any part of a health program or activity receives Federal financial assistance and the entity administering said health program or activity is principally engaged as provided in paragraph (2), then all the operations of the recipient are subject to the rule.”).

As a component of Johns Hopkins University and Johns Hopkins Medicine (*see supra* n.43), the medical school is firmly engaged in the provision of health education for healthcare professionals and students, the performance research, and the administration of health services. *E.g.*, Johns Hopkins University, *About Us – History & Mission*, <https://www.jhu.edu/about/history/> (emphasizing the University’s priorities and leadership in “educat[ion],” “learning” “research,” and “discovery” in its “mission”) (last accessed Jan. 2, 2025); Johns Hopkins Medicine, *Mission, Vision, & Values*, <https://www.hopkinsmedicine.org/about/mission> (“The mission of Johns Hopkins Medicine is to improve the health of the community and the world by setting the standard of excellence in medical education, research and clinical care. Diverse and inclusive, Johns Hopkins Medicine educates medical students, scientists, health care professionals and the public; conducts biomedical research; and provides patient-centered medicine to prevent, diagnose and treat human illness.”) (last accessed Jan. 2, 2025); Johns Hopkins University - School of Medicine, *About Us – Mission Statement*, <https://www.hopkinsmedicine.org/som/about-us/mission> (“The mission of the Johns Hopkins School of Medicine is to educate medical students, graduate students, and postdoctoral fellows in accordance with the highest professional standards; to prepare clinicians to practice patient-centered medicine of the highest standard; and to identify and answer fundamental questions in the mechanisms, prevention, and treatment of disease in health care delivery and in the basic sciences.”) (last accessed Jan. 2, 2025).

In addition, Johns Hopkins is a recipient of federal HHS funding and consistently tops the list of leading organizations for National Institutes of Health (HHS-NIH) funding. *See, e.g.*, USASpending.gov Report, Johns Hopkins University (Recipient Identifier 001910777), <https://www.usaspending.gov/search> (estimating the University’s federal funding from HHS alone at \$8.97 billion) (last accessed Dec. 27, 2024); M.T. Nietzel, *Johns Hopkins University Again Tops List Of Leading Institutions For NIH Funding*, Forbes (Feb. 20, 2023), <https://www.forbes.com/sites/michaelt Nietzel/2023/02/20/johns-hopkins-university-again-tops-list-of-leading-institutions-for-nih-funding/> & M.T. Nietzel, *Top 20 Universities For NIH Funding; Johns Hopkins Ranks First Again*, Forbes (Feb. 10, 2024), <https://www.forbes.com/sites/michaelt Nietzel/2024/02/10/top-20-universities-for-nih-funding-johns-hopkins-ranks-first-again/> (together, recognizing John Hopkins University as the top recipient of federal funding from HHS-NIH for the past two federal fiscal years, totaling over \$1.6 billion in awards with nearly 70% of funding to the University’s School of Medicine) (last accessed Dec. 27, 2024).

Likewise, Title VI contains a similar provision, broadly prohibiting healthcare entities from engaging in racial discrimination when they receive federal funding “under any program or activity,” including “Federal financial assistance from the Department of Health and Human Services.”⁷⁴

As the United States Supreme Court recently reiterated in a case applying the anti-discrimination standards of Title VI, legally-bound actors may not “intentionally allocate preference to those who may have little in common with one another but the color of their skin.”⁷⁵ Such preferences rely upon, and import, illegitimate stereotypes about race into decision-making and employ race as a “negative” against individuals in violation of the “twin commands” of equality.⁷⁶ Consequently, under Title VI, recipients of federal funding, like Johns Hopkins, may *not*, directly or indirectly, on the basis of race:

- “Deny an individual any service, financial aid, or other benefit provided under the program”;⁷⁷
- “Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program”;⁷⁸
- “Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program”;⁷⁹
- “Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program”;⁸⁰
- “Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals

⁷⁴ 42 U.S.C. §§ 2000d, 2000d-4a(2)–(4) & 45 C.F.R. § 80.1; U.S. Dep’t. of Just., Civ. Rts. Div., *Title VI Legal Manual*, Section V: Defining Title VI, <https://www.justice.gov/crt/fcs/T6manual> (recognizing that “[f]or recipients ‘principally engaged’ in the business of providing education, health care, [or other ‘public works’],” “Title VI covers the entire entity when any part of it receives federal financial assistance” pursuant to 42 U.S.C. § 2000d-4a(3)(A)(ii) or the “catch-all provision” under 42 U.S.C. § 2000d-4a(4)).

⁷⁵ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.* (“*SFFA*”), 600 U.S. 181, 220 & n.2 (2023) (reiterating that the standards of constitutional equal protection are also applied to Title VI actors) (citing cases; internal quotation marks omitted).

⁷⁶ *Id.* at 211–212, 218–221.

⁷⁷ 45 C.F.R. § 80.3(b)(1)(i).

⁷⁸ 45 C.F.R. § 80.3(b)(1)(ii).

⁷⁹ 45 C.F.R. § 80.3(b)(1)(iii).

⁸⁰ 45 C.F.R. § 80.3(b)(1)(iv).

must meet in order to be provided any service, financial aid, or other benefit provided under the program”;⁸¹

- “Utilize criteria or methods of administration which subject individuals to discrimination”;⁸²
- “[I]nsulate applicants who belong to certain racial or ethnic groups from the competition for admission”;⁸³
- “[U]se race to foreclose ... consideration” “simply because [an applicant] was not the right color”;⁸⁴
- “[D]esire some specified percentage of a particular group merely because of its race or ethnic origin”;⁸⁵ or
- Otherwise implement racial preferences, or rest its actions upon any racially discriminatory purpose or intention—whether in whole or in part.⁸⁶

Johns Hopkins’ race-based medical education, training, and scholarship programs and diversity councils and offices do *all* of these things in contravention of Title VI and the ACA.⁸⁷ Deriving from its “desire [for] some [quantity] of a particular group merely because of its race or ethnic origin,” Johns Hopkins imposes eligibility criteria and selection preferences for students who are from “racial and ethnic populations that are underrepresented in the medical profession relative to their numbers in the general population.”⁸⁸

⁸¹ 45 C.F.R. § 80.3(b)(1)(v).

⁸² U.S. Dep’t of Health & Hum. Servs., *Civil Rights for Individuals and Advocates - Discrimination on the Basis of Race, Color, or National Origin*, <https://www.hhs.gov/civil-rights/for-individuals/race/index.html> (last accessed Jan. 2, 2025).

⁸³ *SFFA*, 600 U.S. at 211 (citation and internal quotation marks omitted).

⁸⁴ *Id.* at 209 (citation and internal quotation marks omitted).

⁸⁵ *Id.* at 211 (citation and internal quotation marks omitted).

⁸⁶ *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) (the cornerstone of an equal protection violation is a legally-bound actor’s “discriminatory intent[ion] or purpose”); U.S. Dep’t. of Just., Civ. Rts. Div., *Title VI Legal Manual*, Section VI Proving Discrim. – Intentional Discrim., <https://www.justice.gov/crt/fcs/T6manual> (last accessed Jan. 2, 2025).

⁸⁷ According to the ACA and implementing regulations, the standards for evaluating race discrimination under Title VI apply to (and are the same as) race discrimination claims brought under the ACA. *See* 42 U.S.C. § 18116; 45 C.F.R. §§ 92.1(a), 92.4; *see also* U.S. Dep’t of Health & Hum. Servs., *Civil Rights for Individuals and Advocates - Discrimination on the Basis of Race, Color, or National Origin*, <https://www.hhs.gov/civil-rights/for-individuals/race/index.html> (last accessed Jan. 2, 2025) (discussing Title VI and ACA protections and prohibitions against racial discrimination concurrently).

⁸⁸ *SFFA*, 600 U.S. at 211 (citation and internal quotation marks omitted); *supra* §§ I.A–E (discussing race-based URM criteria for medical student clinical rotations in plastic surgery, medicine, orthopaedics, dermatology and pediatrics).

Under this system of preferential treatment, Johns Hopkins has installed an extensive hierarchy of diversity councils and offices purposed—at least in part—to implement diversity programs that “[t]reat ... individual[s] differently from others” “on ground of race, color, or national origin.”⁸⁹ Indeed, each of the aforementioned medical education, training, and scholarship programs use race to “insulate” and otherwise prioritize the consideration of individuals belonging to certain racial classes while diminishing or “foreclos[ing]” individuals of disfavored racial classes from the *same* consideration, or *any* consideration at all.⁹⁰ In other words, individuals who receive a racial preference are afforded a special advantage to compete for programming “at the expense of” those individuals belonging to “racial groups that were not the beneficiaries of the race-based preference” and who have instead been “restrict[ed] ... in,” and “den[ied],” “the enjoyment of [the competitive] advantage or privilege.”⁹¹ Not only does this racial caste system reveal a dichotomy of “segregation or separate treatment,” but it also demonstrates Johns Hopkins’ unlawful use of race as “negative” against applicants and potential applicants.⁹²

Equally problematic, Johns Hopkins’ use of race “devolve[s] into illegitimate ... stereotyp[ing].”⁹³ Ultimately, the *main* “point of [Johns Hopkins’ various diversity programs] is that there is an inherent benefit in race *qua* race—in race for race’s sake.”⁹⁴ This impermissible diversity interest “in race for race’s sake” “rests on the pernicious stereotype that a black [or such other minority] student can usually bring something that a white person cannot offer.”⁹⁵ Approaching sex-based characteristics in the same way, Johns Hopkins’ special diversity programs assert that race and sex in and of themselves—not one’s “own merit and essential qualities”—say who a person is and who is worthy of educational training opportunities and scholarship assistance.⁹⁶

Indeed, the Johns Hopkins School of Medicine “sponsor[s] activities to increase diversity” for the “recruitment and retention of a diverse student body” as defined on the basis of characteristics like race and sex.⁹⁷ The resulting discriminatory education, training, and scholarship “activities” and programs are grounded in a desire to remedy purported

⁸⁹ 45 C.F.R. § 80.3(b)(1).

⁹⁰ 45 C.F.R. § 80.3(b)(1); *SFFA*, 600 U.S. at 209, 211 (citation and internal quotation marks omitted).

⁹¹ *SFFA*, 600 U.S. at 212, 218–19; 45 C.F.R. § 80.3(b)(1).

⁹² *SFFA*, 600 U.S. at 212, 218–19; 45 C.F.R. § 80.3(b)(1).

⁹³ *SFFA*, 600 U.S. at 211 (citation and internal quotation marks omitted).

⁹⁴ *Id.* at 220.

⁹⁵ *Id.* (citation and internal quotation marks omitted).

⁹⁶ *Id.* (citation and internal quotation marks omitted).

⁹⁷ *E.g.*, Johns Hopkins Medicine, Office of Diversity, Inclusion and Health Equity, *Diversity Resources - For Minority Students*, <https://www.hopkinsmedicine.org/diversity/som-diversity-index> (last accessed Jan. 2, 2025) (listing programs and resources “For Women” and “For Minority Students”); *supra* §§ I.A–E (discussing Johns Hopkins’ race-based URM diversity criteria for medical student clinical rotations in plastic surgery, medicine, orthopaedics, dermatology, and pediatrics); *supra* § I.C (discussing Johns Hopkins’ sex-based diversity criteria for medical student clinical rotations in orthopaedics).

disparities in hopes of curing “underrepresent[ation] in medicine” and achieving some desired level of racial and gender balance.⁹⁸ Reinforcing these impermissible goals, Johns Hopkins has implemented a top-down approach, positioning diversity offices and councils at every level of the organization, throughout and “across Johns Hopkins Medicine”—each one of them striving to achieve some level of “diversity” through the prioritization of certain groups deemed to be “underrepresented” when viewed through a race and gender-based demographic lens.⁹⁹

However, race and gender demographics may not be utilized in this manner: Johns Hopkins may not operate its medical education programs (or any others) “on the belief that minority students,” because of their race, “always (or even consistently) express some characteristic minority viewpoint” or circumstance.¹⁰⁰ Nor may such a legally-bound actor allocate benefits using race “as a convenient or rough proxy for another trait” “believe[d] to be ‘characteristic’ of a racial or ethnic group.”¹⁰¹ A system of racial preferences based on such proxies and beliefs only “furthers stereotypes that treat individuals as the product of their race, evaluating their thoughts and efforts—their very worth as [individuals]—according to a forbidden race-based requirement.”¹⁰²

Moreover, it is *well-established* that federal funding recipients, like Johns Hopkins, may *not* rely on general disparities in society to justify racially motivated action.¹⁰³ Indeed, the “outright racial balancing” that Johns Hopkins engages in by prioritizing certain

⁹⁸ *E.g.*, *supra* §§ I.A–E (discussing Johns Hopkins’ race-based URM diversity criteria for medical student clinical rotations in plastic surgery, medicine, orthopaedics, dermatology, and pediatrics); *supra* § I.C (discussing Johns Hopkins’ sex-based diversity criteria for medical student clinical rotations in orthopaedics).

⁹⁹ *E.g.*, Johns Hopkins Medicine, Office of Diversity, Inclusion and Health Equity, *About Us – Diversity Councils*, <https://www.hopkinsmedicine.org/diversity/about-us/diversity-council> (last accessed Jan. 2, 2025); *supra* § I.F; *see also supra* n.43.

¹⁰⁰ *SFFA*, 600 U.S. at 211–12, 219, 221.

¹⁰¹ *Roberts v. McDonald*, 600 U.S. ___ (2023) (statement of Alito, J., respecting the denial of cert.) (citation omitted).

¹⁰² *SFFA*, 600 U.S. at 221 (cleaned up).

¹⁰³ *Id.* at 226.

programs for “underrepresented groups” has been long held to be “patently unconstitutional” and therefore also prohibited by Title VI and the ACA.^{104, 105}

Simply put, Johns Hopkins is *not* authorized to sort individuals, balance populations, or allot benefits and advantages, on the basis of race and sex, no matter how well-intentioned its misguided notions may be. Johns Hopkins must treat people as individuals, “not as simply components of a racial, ... sexual or national class.”¹⁰⁶ In implementing race- and sex-based preferences in its education, training, recruitment, and scholarship programs, Johns Hopkins asserts only illegitimate, stereotypical notions about race and gender, and a deficient, long-forbidden interest in obtaining racial and gender balance for the sake of race and gender

¹⁰⁴ *Id.* at 223 & n.2; *supra* n.75 & n.87.

¹⁰⁵ Likewise, if the aim of “racial balancing” for its own sake is “patently” illegitimate, the aim of simple “gender balancing” is as well. *SFFA*, 600 U.S. at 223 (individuals may not be treated as “components of a sexual class”) (cleaned up) (citation omitted); *Contractors Ass’n of E. Pennsylvania, Inc. v. City of Philadelphia*, 6 F.3d 990, 1010 (3d Cir. 1993) (gender preferences may not be based on “a stereotyped reaction”) (citation omitted); *Harrison & Burrowes Bridge Constructors, Inc. v. Cuomo*, 743 F. Supp. 977, 1002 (N.D.N.Y. 1990) (“simple gender balancing” serves no legitimate purpose); *see also* 42 U.S.C. § 18116 & 45 C.F.R. § 92.1(a) (explicitly incorporating Title IX’s prohibitions and enforcement); *Cannon v. Univ. of Chicago*, 441 U.S. 677, 695 (1979) (observing that “Title IX was patterned after Title VI of the Civil Rights Act of 1964,” and that “[t]he drafters of Title IX explicitly assumed that it would be interpreted and applied as Title VI had been”); *Vengalattore v. Cornell Univ.*, 36 F. 4th 87, 103 (2d Cir., 2022) (explaining that because “[t]he provisions [of Title IX and Title VI] are otherwise identical in scope and thrust, and they use identical language to describe the benefited class, *i.e.*, persons, [c]ases brought under Title IX are generally to be analyzed in the same way as cases under Title VI”) (citations and internal quotation marks omitted).

¹⁰⁶ *SFFA*, 600 U.S. at 223 (citation and internal quotation marks omitted).

diversity.¹⁰⁷ Treating individuals as racial or gender archetypes to “fix” group differences is beyond the remit of a healthcare entity. And in any event, such discrimination is illegal: Title VI and the ACA do not permit federal funding recipients, like Johns Hopkins, to operate their programming opportunities in this manner.

* * *

For all the reasons discussed herein, the discriminatory race and sex-based preferences in the foregoing diversity programs at Johns Hopkins School of Medicine violate Title VI and the ACA.¹⁰⁸ These programs derive from Johns Hopkins’ broader mission to prioritize race and racial politics purposed for “increas[ing] diverse representation at Johns Hopkins” through the installation of numerous diversity councils and offices across the organization.¹⁰⁹ Given this impermissible racial balancing design, there can be little question that other programming at Johns Hopkins is similarly infected with the same blight of racial

¹⁰⁷ As if all this were not enough, Johns Hopkins’ race-based preferences are also impermissibly “imprecise,” “arbitrary,” “undefined,” “overbroad,” and “underinclusive.” *Id.* at 216. Under “[t]his scattershot approach,” individuals are lumped into broad, undefined or ill-defined racial categories, in which certain racial or ethnic groups are arbitrarily prized over others. *See Vitolo v. Guzman*, 999 F.3d 353, 363–64 (6th Cir. 2021). For example, some URM medical education programs implement an arbitrary, undefined, and overbroad race-based priority for “URM” students. *See, e.g.*, Johns Hopkins Medicine, Dermatology Education (Medical Students), *Johns Hopkins Department of Dermatology Diversity Clerkship Award*, <https://www.hopkinsmedicine.org/dermatology/education/medical-students#award> (last accessed Jan. 2, 2025). Meanwhile, the Johns Hopkins Office of Diversity, Inclusion and Health Equity arbitrarily prioritizes specified groups: “Alaska[n] Native,” “Asian-Pacific Islander,” “Black/African American,” “Hispanic/Latino,” “Native American,” “Native Hawaiian,” and individuals who are “[o]ne or more of the [listed] racial or ethnic groups.” *See* Johns Hopkins Medicine, Office of Diversity, Inclusion and Health Equity, *Support for Underrepresented Communities*, <https://www.hopkinsmedicine.org/diversity/support-for-underrepresented-communities>; *accord* Johns Hopkins Medicine, Plastic and Reconstructive Surgery Education (Medical Students), *Underrepresented in Medicine Visiting Elective, “Program Details”*, <https://www.hopkinsmedicine.org/plastic-reconstructive-surgery/education/medical-students> (prioritizing program eligibility using a similar listing of racial groups); *see Vitolo*, 999 F.3d at 363–64 (condemning racial preferences that qualify “individuals who trace their ancestry to Pakistan and India,” but not “those from Afghanistan, Iran, and Iraq” as “plagued with ... underinclusivity”). Moreover, Johns Hopkins’ implementations for racial diversity also lack any “logical end point”—a “critical” narrow tailoring limitation for race-based preferences. *SFFA*, 600 U.S. at 212. The organization’s long term mission and continual operation of various programs and initiatives purposed to achieve racial “diversity” cannot be deemed, in any sense, to be “temporary” or “limited” but rather underscore an impermissible goal to achieve racial and gender balance. *Id.* at 211–12, 223.

¹⁰⁸ *See supra* §§ I.A–E (discussing discrimination in medical student clinical rotations for plastic surgery, medicine, orthopaedics, dermatology, and pediatrics).

¹⁰⁹ *E.g.*, John Hopkins University, Diversity at JHU, *Our Commitment*, <https://diversity.jhu.edu/our-commitment/> and <https://diversity.jhu.edu/our-commitment/a-letter-from-president-daniels-and-provost-kumar/>; Johns Hopkins Medicine, Office of Diversity, Inclusion and Health Equity, *About Us – Diversity Councils*, <https://www.hopkinsmedicine.org/diversity/about-us/diversity-council> (last accessed Jan. 2, 2025); Johns Hopkins Medicine, *Mission, Vision, & Values*, <https://www.hopkinsmedicine.org/about/mission> (incorporating the same notions of “diversity” directly into the overall mission statement of Johns Hopkins Medicine) (last accessed Jan. 2, 2025)

discrimination.¹¹⁰ Accordingly, we ask that you open a formal investigation based on this complaint, and—at a minimum—find that the race-based eligibility criteria and considerations for each of the foregoing medical education programs discriminates against individuals based on race in violation of Title VI and the ACA.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Cara Tolliver
Associate Counsel



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¹¹⁰ *See supra* n.45 & n.52.