



UNITED STATES COMMISSION ON CIVIL RIGHTS

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March 21, 2016

Catherine Lhamon  
Assistant Secretary for Civil Rights  
Office for Civil Rights  
United States Department of Education  
Lyndon Baines Johnson Department of Education Building  
400 Maryland Ave SW  
Washington DC 20202

Dear Ms. Lhamon:

We write as two members of the eight-member United States Commission on Civil Rights, and not on behalf of the Commission as a whole,<sup>1</sup> to comment on the University of Connecticut's establishment of *Scholastic House of Leaders who are African American Researchers and Scholars* ("SchOLA<sup>2</sup>RS House"), a "Learning Community designed to support the scholastic efforts of students who identify as African-American/Black through academic and social support, access to research opportunities, and professional development."<sup>2</sup> Dr. Erik Hines, faculty advisor to SchOLA<sup>2</sup>RS House, has said that "It is a space for African American men to one, come together and validate their experiences that they may have on campus. Number two, it's also a space where they can have conversation and also talk with individuals who come from the same background who share the same experience."<sup>3</sup>

We are deeply concerned that SchOLA<sup>2</sup>RS House was established for the purpose, and will have the effect, of racial separation of African-American male<sup>4</sup> students from others living in University of Connecticut dormitories. Up until a few weeks ago, the University of Connecticut web site explicitly stated that the applications of "student who identify as African-

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<sup>1</sup> The United States Commission on Civil Rights was established in 1957. It is charged with appraising laws and policies "with respect to... discrimination or denials of equal protection under the laws of the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice." 42 U.S.C. § 1975(a).

<sup>2</sup> University of Connecticut Learning Community Program, SchOLA<sup>2</sup>RS House, available at <http://lc.uconn.edu/schola2rshouse/>.

<sup>3</sup> Quoted in Lauren Victory, "UConn officials explain thinking behind African-American male-only section of dorm," Fox61, January 28, 2016, available at <http://fox61.com/2016/01/28/uconn-officials-explain-thinking-behind-african-american-male-only-section-of-dorm/#>.

<sup>4</sup> As we understand it, there is no equivalent Learning Community available for African-American female students, which may be a violation of legal prohibitions on sex discrimination.

We express no ultimate opinion as individual Commissioners in this letter about the legality or desirability of single-sex student housing arrangements. We also express no ultimate opinions as individual Commissioners about student housing arrangements based on common cultural, linguistic, or other interests – e.g. a Japanese Culture House, Francophone House or Engineering House – as long as these arrangements really are based on common cultural, linguistic, or other interests and are not pretexts for racially or ethnically separate housing.

American/Black or mixed race will be prioritized.” This language, which clearly announces an intent to discriminate, appears to have been quietly removed after ScHOLA<sup>2</sup>RS House attracted some attention from the press. We are concerned, however, that the new language may be simply a fig leaf. The name of the Learning Community is, after all, “Scholastic House of Leaders *Who Are* African-American Researchers and Scholars” (emphasis added), not “Scholastic House of Individuals Interested in Engaging Topics Related to the Experience of Black Males in Higher Education” or the like. Further, Dr. Hines (see *supra*) further describes ScHOLA<sup>2</sup>RS House as a space “for African-American men” and notably not as a space for “persons interested in issues affecting African-American men.” It is hard to avoid the conclusion that ScHOLA<sup>2</sup>RS House was intended to promote racial isolation on campus. Moreover, it is impossible to avoid the conclusion that it will in fact promote racial isolation on campus.<sup>5</sup>

We strongly believe that the Commission ought to be against encouraging racial isolation. As members of a past incarnation of the Commission put it, “racial isolation in the schools serves as a deterrent to the full development of the country’s human resources.”<sup>6</sup> We hope and would expect that OCR fully agrees with us.<sup>7</sup>

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<sup>5</sup> We understand that some in the media have criticized characterizations of ScHOLA<sup>2</sup>RS House as a “blacks-only dorm” because the Learning Community constitutes only part of one dormitory building. Respectfully, we think that this is a distinction without a difference. If a landlord were to argue that “only parts of my apartment building are segregated by race, but not all of it is” we do not think that anyone would or should find this a compelling defense under the fair housing laws.

<sup>6</sup> Letter of Transmittal to President Lyndon Johnson, signed by John A. Hannah (Chairman); Eugene Patterson, Vice Chairman; Frankie Freeman, Erwin N. Griswold, Rev. Theodore M. Hesburgh, and Robert S. Rankin, in U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* (1967), available at <https://www.law.umaryland.edu/marshall/usccr/documents/cr12sch612v1.pdf>.

<sup>7</sup> We note that the United States filed an *amicus curiae* brief in the *Fisher v. Texas* affirmative action case which states that:

Over two hundred years ago, George Washington recognized the importance to the Nation of a university education that would “qualify our citizens for the exigencies of public, as well as private life by assembling the youth from the different parts of this rising republic, contributing from their intercourse, and interchange of information, to the removal of prejudices which might perhaps, sometimes arise, from local circumstances.” Letter from President George Washington to the Commissioners of the District of Columbia (Jan. 28, 1795), in 34 *The Writings of George Washington* 106-107 (John C. Fitzpatrick ed., 1940). In *Grutter v. Bollinger*, 539 U.S. 306 (2003), this Court reaffirmed the continuing vitality in our day of President Washington’s common-sense insight, explaining that “the [N]ation’s future depends upon leaders trained through wide exposure to the ideas and mores of students as diverse as this Nation of many peoples.” *Id.* at 324 (quoting *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 313 (1978) (opinion of Powell, J.)(citation and internal quotation marks omitted).

The educational benefits of diversity identified in *Grutter* and *Fisher* are of critical importance to the United States. The government has a vital interest in drawing its personnel—many of whom will eventually become its civilian and military leaders—from a well-qualified and diverse pool of university and service academy graduates.

*Amicus Curiae Brief of the United States, Fisher v. Texas*, No. 14-981 at 8-9, available at <http://www.scotusblog.com/wp-content/uploads/2015/11/14-981bsacunitedstates.pdf>.

We might be forgiven for thinking that the University of Connecticut agreed with us, too. We note that the University of Connecticut recently joined an *amicus curiae* brief that stated that “Amici uniformly are committed to the pursuit of excellence in education, and uniformly believe that meaningful diversity among their students—including racial diversity—is essential to their unique educational missions.”<sup>8</sup> Further, the brief approvingly quotes the Supreme Court case *Grutter v. Bollinger* for the proposition that “the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints” and adds that “there is extensive evidence showing that meaningful interaction among students of different backgrounds improves the quality of education for all students.”<sup>9</sup> We do not understand how race-separate “learning communities” help achieve *Grutter*’s ideals of “meaningful diversity” or prepare students to work in a racially diverse marketplace. Rather, by limiting students’ exposure to members of other racial and ethnic backgrounds, they are more likely to do the opposite.

It is of course true that the dormitory is not the only place in which students of different races can interact with, and learn from, one another. But it is certainly an important one. If the University of Connecticut is correct that meaningful interaction among students of different races improves the quality of education for all, it should not be in the business of promoting racially separate learning communities.

If we as members of the United States Commission on Civil Rights stand for anything, it ought to be this: racially separate housing is a bad idea. We believe that the University of Connecticut has made a mistake here – one that we hope no other college or university repeats, and one which is especially egregious for a public school bound by the constitutional prohibition on race discrimination.

We believe that this situation cries out for a response from OCR, particularly in light of reports that there are other public universities with similar programs that have received less scrutiny.<sup>10</sup> We respectfully ask that you write to us within 30 days to explain what actions you plan to take (e.g. initiating a compliance review or other investigation or promulgating regulations regarding the legality of racially separate housing on college campuses) in response to this situation. If you do not plan to take any action, we would appreciate hearing that too and also to receiving an explanation as to why you have chosen to take no action at this time.

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<sup>8</sup> Brief of Appalachian State University and 35 Fellow Colleges and Universities as Amicus Curiae in Support of Respondents, *Fisher v. Texas*, No. 11-345 at 2, available at <http://www.utexas.edu/vp/irla/Documents/ACR%20Appalachian%20State%20University%20and%2035%20Fellow%20Colleges%20and%20Universities.pdf>.

<sup>9</sup> *Id.* at 6.

<sup>10</sup> We understand that the University of Iowa runs a similar program called “Young, Gifted and Black,” a “community that supports students who identify as Black or African-American.” See “Young, Gifted, and Black,” available at <http://housing.uiowa.edu/living-learning-communities/young-gifted-and-black>. The University of Minnesota also runs a program called the Huntley House for African-American Men. See Huntley House for African-American Men, available at <http://aaas.umn.edu/ugrad/huntleyhouse.html>. We have similar objections to each of those programs.

Sincerely,

A handwritten signature in black ink, appearing to read "Gail Heriot". The signature is fluid and cursive, with a large initial "G" and a stylized "H".

Gail Heriot

A handwritten signature in black ink, appearing to read "Peter Kirsanow". The signature is more compact and stylized than the one above, with a large initial "P" and a long horizontal stroke at the end.

Peter Kirsanow