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February 10, 2025

EEOC

Submitted Through Online Portal:

<https://publicportal.eeoc.gov/Portal/Login.aspx>

Re: Title VII Violations Through Diversity Clerkship Program and Related Programs

Ladies and Gentlemen:

The American Civil Rights Project (the "ACR Project"), on behalf of our client, Faculty, Alumni, & Students Opposed to Racial Preferences ("FASORP"), joins with our fellow are nonprofit organizations devoted to promoting equal protection under the law, the Center for Equal Opportunity ("CEO") and Wisconsin Institute for Law & Liberty, Inc. ("WILL") in submitting this charge.

FASORP is a voluntary, unincorporated, non-profit membership organization with members nationwide. FASORP members formed it for the purpose of restoring meritocracy in academia and fighting race and sex preferences that subordinate merit to so-called diversity considerations. FASORP's members include current law students who are ready and able to apply for the DCP and JIOP programs (each as defined below), as well as current lawyers ready and able to join the American Bar Association (the "ABA") and apply for the BLF, DF, DIFP, and LCAF programs (as defined below).

These individuals and organizations have become aware that the ABA has created a series of systematic violations of Title VII and other federal statutes. They have drawn these violations to the ABA's attention, as described below. Despite the ABA's resulting affirmative knowledge of the illegality of these programs, the ABA has not only failed to cure these programs of their illegality, it has retained and extended them. The resulting violations are ongoing at this time.

In early 2024, through the letter attached as “Exhibit A” (the “Title VII Notice Letter”), the ACR Project and CEO alerted the ABA to the illegality of the Diversity Clerkship Program (the “DCP”) run by its subdivision the American Bar Association Business Law Section. The ABA then qualified and disqualified law students through the DCP for paid clerkships in the chambers of business courts across America based on their race, color, national origin, and sex. The Title VII Notice Letter alerted the ABA that, in selecting participants on these bases for paid work that constitutes a training opportunity, the ABA was violating at least: (a) Title VII as an employer; (b) Title VII as an employment agency acting on behalf of employer judges; and (c) 42 U.S.C. § 1981. Through the Title VII Notice Letter, the ACR Project and CEO demanded that the ABA “immediately cease unlawfully discriminating against applicants to the [DCP] on the basis of race, color, national origin, or sex.” Through the Title VII Notice Letter, the ACR Project and CEO also warned the ABA that its administration of the DCP appeared to be drawing state court judges into violation of Title VII as employers, Section 1981 as contracting parties, and the Equal Protection Clause of the Fourteenth Amendment.¹

Soon thereafter, WILL filed with the U.S. Department of Education and U.S. Department of Justice a complaint against the ABA (the “Initial Title VI Complaint”), challenging the DCP and eight (8) other programs as violations of Title VI.² A copy of the Initial Title VI Complaint is attached as “Exhibit B”. The Initial Title VI Complaint documented both that the ABA is a federal funding recipient,³ and that the identified programs *all* discriminated based on race in selecting their beneficiaries in violation of federal, state, and local civil-rights laws.

Since these submissions, in apparent recognition of the illegality of the programs identified in the Initial Title VI Complaint, the ABA scrubbed its webpage to alter its descriptions of *some* of those programs.⁴

¹ The Title VII Notice Letter also warned the ABA that it appeared to be drawing any law schools participating in the DCP into their own violation of both Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

² For completeness, the full set of programs at issue in the Initial Title VI Complaint were the ABA’s: Judicial Clerkship Program, Judicial Intern Opportunity Program (the “JIOP”), Legal Opportunity Scholarship, Business Law Fellows Program (the “BLF”), Diversity Fellows Program (the “DF”), Diversity and Inclusion Fellowship Program (the “DIFP”), GPSolo Diversity Fellowship Program, and the Loretta Collins Argrett Fellowship Program (the “LCAF”).

³ Since WILL’s issuance of the Initial Title VI Complaint, the ABA made public the Consolidated Financial Statements and Report of Independent Certified Public Accounts for the ABA through August 31, 2024 (“Current ABA Audit”). See, https://www.americanbar.org/content/dam/aba/administrative/aba/aba_financials/fy2024-aba-audited-financial-statements.pdf (last visited, Dec. 20, 2024). The Current ABA Audit admits this point, agreeing that “A portion of the ABA’s revenue is derived from federal ... contracts and grants[.]”

⁴ See, Karen Sloan, *ABA Strikes “Minority” and “Of Color” from Clerkship Criteria Amid Lawsuit Threat*, Reuters, Oct. 8, 2024 (Last visited, Dec. 19, 2024), <https://www.reuters.com/legal/government/aba-strikes-minority-of-color-clerkship-criteria-amid-lawsuit-threat-2024-10-08/>.

Nonetheless, the ABA has *not* addressed the obvious illegality of *all* of these programs. Instead:

- Its website clearly continues to establish that the ABA still administers the DCP with *precisely* the same discriminatory set of demographically based qualifications it did at issuance of the Title VII Notice Letter.⁵ Indeed, the ABA accepted “Applications” for the program premised on these discriminatory qualifications “through December 31, 2024.”
- The ABA’s website continues to define the JIOP’s “mission ... to provide opportunities to students who are members of groups that are traditionally underrepresented in the profession, including students from minority racial and ethnic groups, ... students who identify as LGBTQ+, women, and others[.]”⁶ The JIOP eligibility page specifically states that “[q]ualified applicants are those who belong to a group that is traditionally underrepresented in the legal profession[.]” “including students from minority racial and ethnic groups, students with disabilities, veterans, students who are economically disadvantaged, students who identify as LGBTQ+, women, and others.” Like the DCP, the JIOP remains an ongoing program of the ABA, with a submission window for “JIOP application[s] open[ing] November 4 and clos[ing] on January 10.”⁷ Like the DCP, the JIOP sees the ABA not only discriminatorily select judicial clerks for training opportunities through paid employment, but sees the ABA compensate those selected for their work.
- The ABA’s website continues to state that “applicants” to the BLF “must fall into one of these categories: ... Lawyer of color ... LGBTQ+ Lawyer[.]”⁸ Like the DCP and the JIOP, the BLF remains a live program, with “Applications for 2025-2027 [set to] open in March 2025.” The ABA openly describes the BLF as “a springboard to leadership opportunities” intended to “develop future leaders of the Business Law Section[.]”
- The ABA website similarly leaves unaltered its description of its International Law Section’s DF.⁹ And that for its Criminal Justice Section’s DIFP.¹⁰ And appears to continue to invite applications to each.

⁵ https://www.americanbar.org/groups/business_law/about/awards-initiatives/diversity/ (last visited Jan. 22, 2025).

⁶ See, <https://www.americanbar.org/groups/litigation/about/awards-initiatives/jiop/program/> (last visited, Jan. 22, 2025).

⁷ See, <https://www.americanbar.org/groups/litigation/about/awards-initiatives/jiop/> (last visited, Jan. 22, 2025).

⁸ See, https://www.americanbar.org/groups/business_law/about/awards-initiatives/fellows/.

⁹ Compare, Exhibit B to https://www.americanbar.org/groups/international_law/about/awards/diversity-fellowship/ (last visited, Dec. 19, 2024).

¹⁰ Compare Exhibit B to https://www.americanbar.org/groups/criminal_justice/about/initiatives/fellowship/ (last visited, Dec. 19, 2024).

- While the applications window for the LCAF will not re-open until “early 2025[.]” its website continues to limit “Eligibility” to “Any individual with a diverse background *or* a demonstrated commitment to promoting diversity, equity and inclusion in the tax bar....”¹¹ Given that it continues to self-define by the “goal ... to identify, engage, and infuse historically underrepresented individuals into the Section ... and [to] support the ... diversification, and inclusiveness of the tax profession[.]” it certainly appears the contemplated “diversity” is entirely demographic, extending in no way beyond consideration of race, national origin, and color.

The ABA employs approximately 800 individuals,¹² so the ABA is clearly subject to Title VII’s constraints.

The DCP and JIOP each clearly sees the ABA discriminate based on race, color, national origin, and sex, as both an employer and as an employment agent of state judges, in selecting both those to be compensated for work and trained for work. These are clear violations of 42 USC § 2000e-2(a), (b), and (d).

The BLF, DF, DIFP, and LCAF each sees the ABA discriminate based on race, color, and national origin (while the BLF, DF, and DIFP also do so based on sex) in dispensing employment training. These are clear violations of 42 USC § 2000e-2(d).

Through the above-referenced webpages, the ABA publishes: (a) employment, employment placement, and job-training opportunities; and (b) its intention to engage in, in admission to, preference, limitation, specification, or discrimination in such employment, employment placement, and job-training opportunities, (c) based on race, color, sex, and national origin. These are clear violations of 42 USC § 2000e-3(b).

The ABA has specifically been warned of the DCP’s violation of Title VII. It has been warned of the inconsistency of the DCP, JIOP, BLF, DF, DIFP, and LCAF with longstanding American nondiscrimination law more generally. Even if this were not the case, the ABA, as a leading organization of legal professionals, would be properly charged with knowledge of the facial illegality of all of these programs and all of these published notices of the discrimination embedded in all of these programs.¹³

¹¹ See, <https://www.americanbar.org/groups/taxation/about/awards-initiatives/loretta-argrett-fellowship/guidelines/> (last visited, Dec. 19, 2024).

¹² See, <https://www.zipppia.com/american-bar-association-careers-48377/>.

¹³ C.f., *Sanchez v. City of Santa Ana*, 1991 U.S. App. LEXIS 10459, *37-*38 (9th Cir. 1991) (citing *more than 30 years ago* authorities *even then* long-since establishing that the “right to be free from such invidious discrimination” was “so well established and so essential to the preservation of our constitutional order that all public officials must be charged with knowledge of it” for governmental officials *already* to have had in 1991 no “qualified immunity from a section 1981 or section 1983 action based on intentional discrimination[.]” If this was sufficiently clear to overcome the qualified immunity of government officials in 1991, it is sufficiently clear, *more than*

At this stage, it seems irrefutable that the ABA's continuance of these programs and continuation of these advertisements of these programs, all with their still-embedded discrimination, must qualify as intentional discrimination in violation of Title VII.

We therefore ask that you formally investigate the ABA's liability under Title VII.

Respectfully Yours,



Daniel I. Morenoff
The ACR Project,
Executive Director



Devon Westhill
Center for Equal Opportunity,
President and General Counsel



Skylar Croy
Wisconsin Institute for Law &
Liberty,
Associate Counsel

three decades later, to charge an organization purporting to lead the legal profession with at least the same knowledge.