UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

DO NO HARM,

Plaintiff,

v.

KENYA L. EDDINGS, in her official capacity as Arkansas Minority Health Commission Executive Director,

Defendant.

Case No. 4:23-cv-347-LPR

ORAL HEARING REQUESTED

PLAINTIFF DO NO HARM'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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INTRODUCTION

The Arkansas Minority Health Commission (AMHC) runs a scholarship—the Minority Healthcare Workforce Diversity Scholarship—that discriminates against students based on their skin color. To be eligible for the scholarship, an applicant must "confirm that [he is] a racial minority," meaning "African American, Hispanic, Native American/American Indian, Asian American or Marshallese." *See* Ex. A at 2; *see also* Ex. B at 2, 3. In other words, Arkansas's white and Arab-American students need not apply.

The scholarship is blatantly illegal. "Classifications of citizens solely on the basis of race are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Shaw v. Reno*, 509 U.S. 630, 643 (1993) (cleaned up). The "central mandate" of the Equal Protection Clause is "racial neutrality." *Miller v. Johnson*, 515 U.S. 900, 904 (1995). Discrimination based on skin color "is presumptively invalid," *Shaw v. Reno*, 509 U.S. 630, 643 (1993), and racial classifications are reviewed "under strict scrutiny," *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995). Under that rubric, a defendant must "assert a compelling state interest" and "demonstrate that its [program] is necessary to serve the asserted interest." *Burson v. Freeman*, 504 U.S. 191, 199 (1992). The outright exclusion of an entire racial group cannot satisfy strict scrutiny.

Plaintiff, Do No Harm, has at least one member (Member A) who satisfies all the eligibility requirements under the scholarship except one—Member A is white and not Hispanic. Member A is able and ready to apply to the scholarship for the Fall 2023 semester (and later semesters) if Defendant stops racially excluding white applicants.[1] Based on past scholarship cycles, Do No Harm expects that the deadline for the Fall 2023 semester will sometime in June 2023. *See* Ex. C ("[d]eadline to apply for

[1] Defendant's scholarship is available for the "[f]all semester and spring semester." *See* Ex. B at 4; Ex. C at 2; Ex. D at 4 (Spring 2023); Ex. E at 4 ("Scholarships are awarded twice per year," including "for the Fall 2022 school semester").

the" Fall 2022 scholarship was "June 24th, 2022, by 5:00p.m., CST"). Do No Harm respectfully requests that the Court issue a temporary restraining order and preliminary injunction barring Defendant from making any scholarship selections for Fall 2023 and subsequent semesters by using the existing, racially exclusionary criteria during the pendency of this action. Because the application process for the next round of scholarships likely ends in June 2023, Do No Harm respectfully asks this Court to grant its motion for temporary restraining order **as soon as possible**, and to rule on the motion for preliminary injunction by **May 31, 2023**.

BACKGROUND

A. The Arkansas Minority Health Commission and the Arkansas Department of Health provide racially exclusive scholarships.

Arkansas has "established the Arkansas Minority Health Commission." Ark. Code §20-2-102. Arkansas law declares that the "Department of Health" "shall collaborate with the commission to achieve healthcare equity in the State of Arkansas." §20-2-103(a)(2)(B)(i). The law also requires that AMHC "report to the Secretary of the Department of Health" its work, including "[o]utlining plans for continuing and expanding in the coming year the program to reduce disparities in health and health care in this state." §20-2-106. Arkansas has "created a cash fund" for AMHC "to be used for expenses." §20-2-205(a). Arkansas also permits AMHC to "receive grants and donations," "which shall be deposited in the State Treasury as cash funds and may be used for reimbursements for expenses of providing seminars or educational activities." §20-2-205(b). Among other powers and duties, AMHC must "[p]ublish evidence-based data, define state goals and objectives, and develop pilot projects for decreasing" "racial and ethnic minority disparities in health and health care." §20-2-103(a)(7)(A), (8).

AMHC has exercised its powers to create the Minority Health Workforce Diversity Scholarship and has promulgated "Rules and Regulations" for the scholarship's governance. Ex. B at 2. Rule 1 declares that AMHC "shall administer" the scholarship. *Id.* "All formal communications shall be addressed to or signed by the Director" of AMHC, *id.*, who is Defendant Eddings, Compl. (Doc. 1)

¶7; Ex. A at 2; Ex. D at 4; Ex. E at 4. The "Director … has the final responsibility for selecting scholarship recipients pursuant to [the] mission, vision and goals of the Commission." Ex. B at 2.

AMHC's stated "goal of the scholarship is to help increase diversity in the state's healthcare workforce." *See* Ex. B at 2. To further that goal, AMHC has established the following eligibility requirements:

> **Scholarship Eligibility Criteria**
>
> An applicant must meet the following requirements to be eligible to receive the Minority Health Workforce Diversity Scholarship:
>
> - Must be a U.S. citizen or permanent resident alien
> - Must be a bona fide resident of the state as defined by the Department of Higher Education for a minimum of 12 months immediately before the date on which the student applies
> - Must be enrolled in a program of study that leads to or is creditable towards a field of health (i.e. medicine, nursing, pharmacy, dental, radiology, allied health, public health and/or health related professions)
> - Must certify they are tobacco-free and must pledge in writing on the application form to refrain from the use of tobacco
> - Must represent a racial minority population underrepresented in health workforce (i.e. Black American, Hispanic American, Native American/American Indian, Asian American and Marshallese)

Id.

AMHC's racial exclusion is manifest in other parts of the scholarship's rules and regulations. Rule 2(F) states that "[a]pplicants must represent a racial minority population underrepresented in health workforce," a category that "include[s]: Black American, Hispanic American, Native American/American Indian, and Asian American." *Id.* at 3. Rule 3 states that "[a]ny interested minority student planning to enroll in an eligible public or private college or university in Arkansas may apply." *Id.* And the rules and regulations separately define "eligible applicant" to mean "minority applicant." *Id.* at 5; *see also* Ark. Code §20-2-101(2) ("'Minority' means black Americans, Hispanic Americans, Asian Americans, and American Indians."). So, white students are categorically prohibited from competing for the $1,000 scholarship Defendant awards to eligible full-time students. *Id.* at 2-3.

Consistent with its rules and regulations, AMHC has expressly discriminated against white students on its past application forms. AMHC under Defendant Eddings and the Arkansas Department of Health created and published the "**Spring** semester of **2023**" application form. Ex. A at 2. Under a section titled "Eligibility," the application requires that students confirm their eligibility by signing their "initial" next to each eligibility criterion. *Id.* One of the criteria students must confirm is stated as follows: "I confirm that I am a racial minority (African American, Hispanic, Native American/American Indian, Asian American or Marshallese)." *Id.* So, although students "must complete the Minority Health Workforce Diversity Scholarship application and essay" by the "deadline for receipt of applications," Ex. B at 3, the application form makes it impossible for white or Arab-American students to do so without lying about their race, *see* Ex. A at 2, 5 (requiring applicants to confirm by "signing … that all the information provided above … is true and correct"); Member A Decl. ¶11.

Defendant has applied AMHC's racially exclusive rules and regulations to past application cycles. Recently, the Department of Health publicly confirmed that AMHC "awarded $27,500 in scholarships to 29 *minority* students pursuing careers in health care and public health for the Spring 2023 school semester." Ex. D at 4 (emphasis added). Consistent with AMHC's stated "goal … to help increase diversity in the state's healthcare workforce," *see* Ex. B at 2, Defendant stated that the selected students "'will help close the minority workforce diversity gap,'" Ex. D at 4. Similarly, for the Fall 2022 semester, AMHC awarded "$26,000 in scholarships to 28 minority students pursuing careers in health care and public health." Ex. E at 4. Defendant reiterated AMHC's concern about the "'ever-increasing gap in minority representation in the health care workforce.'" *Id.*

B. Do No Harm has white members who are ineligible to apply to the scholarship based solely on their race.

Do No Harm is a nationwide membership organization consisting of a diverse group of physicians, healthcare professionals, students, patients, and policymakers who want to protect healthcare from a radical, divisive, and discriminatory ideology. Compl. ¶4; Rasmussen Decl. ¶3. Do No Harm

accomplishes its mission through education and advocacy about the divisive and discriminatory ideas being embedded within medical education, training, research, practice, and policy. Compl. ¶5; Rasmussen Decl. ¶3. It has, among other things, sued the Biden administration for introducing discriminatory "equity" criteria into Medicare, sued private medical organizations for creating racially exclusive fellowships, and filed OCR complaints against medical schools that create fellowships and scholarships that exclude students based on race. Compl. ¶5; Rasmussen Decl. ¶3.

Do No Harm has at least one member who is being harmed by Defendant's racially discriminatory scholarship. Compl. ¶6; Rasmussen Decl. ¶¶4-9. Member A meets all nonracial criteria for applying to the scholarship. Compl. ¶41; Mem. A Decl. ¶¶3, 4-11. Member A, a sophomore, is currently enrolled as a full-time pre-nursing student at a public university in Arkansas. Compl. ¶33; Mem. A Decl. ¶¶6-7; Rasmussen Decl. ¶¶7-8. Member A is a U.S. citizen, was raised in Arkansas, and has been a resident of Arkansas for more than 12 months. Compl. ¶¶34-35; Mem. A Decl. ¶5. Member A is tobacco-free and would pledge in writing to refrain from the use of tobacco. Compl. ¶38; Mem. A Decl. ¶10. But Member A does not satisfy the scholarship's racial criterion because Member A is non-Hispanic white. Compl. ¶39; Member A Decl. ¶¶3, 11; Rasmussen Decl. ¶9.

Member A is able and ready to apply to the scholarship for the next cycle if Defendant stops discriminating against white applicants. Compl. ¶42; Mem. A Decl. ¶11. Member A would like to apply to the scholarship because it would provide her with financial assistance as she pursues her health-related education and career.[2] Compl. ¶40; Mem. A Decl. ¶8. Member A expects to be a full-time pre-nursing student in Arkansas in the Fall 2023 semester, and a full-time nursing student in the Spring 2024, Fall 2024, and Spring 2025 semesters. Compl. ¶36; Mem. A Decl. ¶¶6-7. However, Member A

[2] According to AMHC's advertisement of the scholarship, "If you desire to be a nurse, physician, pharmacist, dentist, nutritionist or anything in the field of health, this scholarship is for you!" Ex. C at 2.

is barred from the scholarship solely on account of race. Compl. ¶¶39, 41; Mem. A Decl. ¶¶3, 11. If the Fall 2023 and future application forms continue to require that applicants confirm that they are a racial minority, Member A cannot truthfully complete them. Compl. ¶¶14, 24, 39; Mem. A Decl. ¶11.

ARGUMENT

Do No Harm is entitled to a temporary restraining order and a preliminary injunction if it can demonstrate that the following four factors weigh in its favor: "'(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that [the] movant will succeed on the merits; and (4) the public interest.'" *D.M. by Bao Xiong v. Minnesota State High Sch. League*, 917 F.3d 994, 999 (8th Cir. 2019); *Little Rock Fam. Plan. Servs. v. Rutledge*, 458 F. Supp. 3d 1065, 1071 (E.D. Ark. 2020) ("The same standards are applied to motions for temporary restraining orders."). "While no single factor is determinative, the probability of success factor is the most significant." *Carson v. Simon*, 978 F.3d 1051, 1059 (8th Cir. 2020) (cleaned up).

A. Do No Harm is likely to succeed on the merits.

AMHC is denying white students like Member A "the equal protection of the laws." U.S. Const. amend. XIV, §1; *see* 42 U.S.C. §1983. The "central mandate" of equal protection is "racial neutrality." *Miller*, 515 U.S. at 904. Whenever an individual is treated "unequally because of his or her race, that person has suffered an injury that falls squarely within the language and spirit of the Constitution's guarantee of equal protection." *Adarand Constructors, Inc.*, 515 U.S. at 229-30.

"[A]ll racial classifications … must be analyzed by a reviewing court under strict scrutiny." *Id.* at 227. This is true "even for so-called 'benign' racial classifications." *Johnson v. California*, 543 U.S. 499, 505 (2005); *accord Kohlbek v. City of Omaha*, 447 F.3d 552, 555 (8th Cir. 2006) ("We apply strict scrutiny to all governmental distinctions on the basis of race."). Because Defendant's scholarship facially excludes white students, Ex. A; Ex. B, Defendant must satisfy strict scrutiny.

Strict scrutiny is a "searching examination, and it is the government that bears the burden to prove that the reasons for any racial classification are clearly identified and unquestionably legitimate." *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 310 (2013) (cleaned up). "Applying strict scrutiny, a racial classification is constitutional, under the Equal Protection Clause of the Fourteenth Amendment, only if it is a narrowly tailored measure that furthers a compelling governmental interest." *Kohlbek*, 447 F.3d at 555. Defendant cannot satisfy strict scrutiny.

First, no compelling governmental interest justifies the complete exclusion of white students from the scholarship. The only legally permissible interest that the AMHC or the Department of Health could claim is remedying the present effects of their own past intentional discrimination in healthcare. *See City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 498 (1989). But this is not the "'actual'" goal that the AMHC seeks to accomplish. *Shaw v. Hunt*, 517 U.S. 899, 908 n.4 (1996). Instead, AMHC's stated "goal of the scholarship is to help increase diversity in the state's healthcare workforce, which *could* have positive effects on" health. *See* Ex. B at 2 (emphasis added); *see also* Ark. Code §20-2-103(a)(2)(B)(i) ("Department of Health" "shall collaborate with the commission to achieve healthcare equity in the State of Arkansas."); §20-2-106 (AMHC "[o]utlin[es] plans for continuing and expanding in the coming year the program to reduce disparities in health and health care in this state."); §20-2-103(a)(7)(A), (8) (AMHC must "[p]ublish evidence-based data, define state goals and objectives, and develop pilot projects for decreasing" "racial and ethnic minority disparities in health and health care"). Indeed, Defendant herself recently justified her discriminatory selection of students on the ground that the selected students "'will help close the minority workforce gap.'"[3] Ex. D at 4.

[3] Defendant's justification that "'[t]here is an ever-*increasing* gap in minority representation in the health care workforce,'" Ex. E at 4 (emphasis added), undermines any suggestion that discriminatory selection is aimed at remedying the effects of decades-old intentional discrimination.

That won't do. Neither "racial balancing" nor "the imposition of racial proportionality" is a compelling interest. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 730-31 (2007). And if, as here, a racial classification "is *the* factor" that is, "for some students, … determinative standing alone," then an appeal to "diversity" fails to justify the classification. *See id.* at 723; *see also id.* (rejecting a "limited notion of diversity" that "view[ed] race exclusively in white/nonwhite terms"); *see also, e.g.*, *MD/DC/DE Broads. Ass'n v. FCC*, 236 F.3d 13, 21 (D.C. Cir. 2001) (employment practices favoring certain race groups to promote "'programming diversity'" was not compelling interest); *Lomack v. City of Newark*, 463 F.3d 303, 309-10 (3d Cir. 2006) (diversity in workplace for the fire department did not amount to compelling interest). So AMHC has not identified an interest that could justify "den[ying] certain citizens the opportunity to compete for" a public benefit "based solely upon their race." *Croson*, 488 U.S. at 493.

Even if AMHC's actual purpose were to remedy the effects of the state's own past discrimination, that still wouldn't be a compelling interest here. AMHC has failed to "'identify that discrimination, public or private, with some specificity *before*" it imposed its racial exclusion. *Hunt*, 517 U.S. at 909 (emphasis added). "[A] generalized assertion that there has been past discrimination in an entire industry" cannot justify an outright racial exclusion. *Croson*, 488 U.S. at 497-99. Even if there were "no doubt" that Arkansas has a "sorry history of both private and public discrimination" in the healthcare industry, that "observation, standing alone, cannot justify a rigid racial quota in the awarding of" a public benefit. *Id.* at 499. "[A]n amorphous claim that there has been past discrimination in a particular industry *cannot* justify the use of an unyielding racial quota." *Id.* (emphasis added). "Unyielding" describes precisely the outright racial exclusion in the rules and regulations that govern AMHC's scholarship. *See* Ex. B.

Moreover, "the institution that makes the racial distinction must have had a 'strong basis in evidence' to conclude that remedial action was necessary, '*before* it embarks on an affirmative-action

program.'" *Hunt*, 517 U.S. at 910. There is no evidence in the application or in the rules and regulations that AMHC analyzed prior discrimination as the cause of disparities. *See* Ex. B. Likewise, there is no evidence that AMHC concluded based on evidence that a complete racial exclusion is necessary to remedy past discrimination in the healthcare workforce. *Id.* So no compelling interest justifies AMHC's outright racial exclusion.

Second, AMHC also cannot show that its scholarship's racial exclusion is narrowly tailored. Narrow tailoring requires "the most exact connection between justification and classification." *Wygant v. Jackson Bd. Of Educ.*, 476 U.S. 267, 280 (1986). It also requires that a racial classification be "necessary" to accomplish the compelling interest. *See Parents Involved*, 551 U.S. at 734-35.

AMHC cannot show an "exact connection" between its racially exclusive scholarship and its goal to promote diversity in healthcare. An outright exclusion of all white applicants is not "exact[ly] connect[ed]," *Wygant*, 476 U.S. at 280, to AMHC's stated objective of increasing diversity in the healthcare workforce. *See Gratz v. Bollinger*, 539 U.S. 244, 271-72 (2003) (automatic 20 points awarded to "underrepresented minority" applicants solely because of race was not narrowly tailored); *cf. MD/DC/DE Broads. Ass'n*, 236 F.3d at 22 ("a sweeping requirement is the antithesis of rule narrowly tailored to meet a real problem").

There is likewise no exact connection between AMHC's outright racial exclusion and remedying past discrimination. *See Kohlbek*, 447 F.3d at 555-56 (holding that racial classification was "not narrowly tailored to further the goal of remedying past discrimination" because government employed "the use of racial classifications in situations where there is no identified past discrimination"). A scholarship is not "a tailored remedy program" unless disparities are based on "an accurate determination of … the extent to which that disparity flows from past discrimination," *Podberesky v. Kirwan*, 38 F.3d 147, 160 (4th Cir. 1994)—a determination that's absent here.

Other problems abound. The scholarship takes account of academic excellence, Ex. A at 3, even though "[h]igh achievers, whether African-American or not, are not the group [in healthcare] against which [AMHC or the Department of Health] discriminated in the past," *see Kirwan*, 38 F.3d at 158 (holding that a racially exclusive scholarship was not narrowly tailored). The scholarship inexplicably excludes Arab Americans, even though that group has suffered discrimination. And it includes Asian Americans, even though there's no evidence that the group is "underrepresented" in health generally or that any underrepresentation in Arkansas is "based on present effects of past discrimination." *See Kirwan*, 38 F.3d at 160. As the Supreme Court has explained, "one may legitimately ask why" black students would be "forced to share this 'remedial relief' with a[] [person belonging to another preferred racial group] who move[d] to [Arkansas]" a year ago. *Croson*, 488 U.S. at 506. In short, an outright racial exclusion in a scholarship "'cannot be said to be narrowly tailored to any goal, except perhaps outright racial balancing.'" *Kirwan*, 38 F.3d at 160.

Nor can AMHC show that the racial exclusion in its scholarship is necessary. To make this showing, Defendant must prove that it "considered methods other than explicit racial classification to achieve [its] stated goals." *Parents Involved*, 551 U.S. at 735. But there is no evidence that AMHC ever considered a race-neutral alternative. *See Kirwan*, 38 F.3d at 161 (holding that a "University's choice of a race-exclusive merit scholarship program as a remedy cannot be sustained" in part because "the University ha[d] not made any attempt to show that it ha[d] tried, without success, any race-neutral solutions"). Given AMHC's goal to promote minority health, Ex. B at 2; Ex. E at 4, obvious alternatives were available that would be better tailored than race. For example, AMHC could have restricted its scholarship to students with a particular interest in health problems that disproportionately affect minority communities. Instead, it decided to completely exclude students based entirely on race.

B. Do No Harm and its members will suffer irreparable harm without immediate relief.

Do No Harm and Member A's injuries are irreparable because Member A is suffering from racial discrimination in violation of the Equal Protection Clause. "[O]ne form of injury under the Equal Protection Clause is being forced to compete in a race-based system that may prejudice the plaintiff." *Parents Involved*, 551 U.S. at 719. "The injury in cases of this kind is that a 'discriminatory classification prevent[s] the plaintiff from competing on an equal footing.'" *Adarand*, 515 U.S. at 211. The injury is "the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit." *Ne. Fla. Chapter of Assoc. Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993).

That injury is irreparable. "The violation of a constitutionally protected right constitutes 'irreparable harm,'" including where a plaintiff shows "that he has been unconstitutionally discriminated against." *Smith v. S. Dakota*, 781 F. Supp. 2d 879, 887 (D.S.D. 2011) (quoting *Kirkeby v. Furness*, 52 F.3d 772, 775 (8th Cir. 1995)); *accord Jernigan v. Crane*, 64 F. Supp. 3d 1260, 1287-88 (E.D. Ark. 2014), *aff'd*, 796 F.3d 976 (8th Cir. 2015) ("inability to exercise … fundamental right … has caused irreparable harm"); *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009). So Do No Harm's "showing that the [scholarship] interfered with … the [constitutional] rights of its [members] supports a finding of irreparable injury." *Planned Parenthood v. Citizens for Cmty. Action*, 558 F.2d 861, 867 (8th Cir. 1977); *see also*, *e.g.*, *Coal. for Equity & Excellence in Md. Higher Ed. v. Md. Higher Ed. Comm'n*, 295 F. Supp. 3d 540, 556 (D. Md. 2017) ("'Irreparable injury comes from the maintenance of segregative policies[.]'"); *L.E.A. v. Bedford Cnty. Sch. Bd.*, 2015 WL 4460352, at *4 (W.D. Va. July 21, 2015) ("Assuming Plaintiffs are able to prevail on the merits of their Equal Protection claim, they will suffer irreparable harm."); *cf. Hisp. Nat'l L. Enf't Ass'n NCR v. Prince George's Cty.*, 535 F.Supp.3d 393, 427 (D. Md. Apr. 21, 2021) ("Where the Court has found a likelihood of success on Plaintiffs' equal protection claim, the deprivation of such a constitutional right alone would constitute irreparable harm.").

Moreover, "[w]ithout injunctive relief or final resolution of th[is] suit," Member A "will be prevented from competing next" scholarship cycle, *see Bao Xiong*, 917 F.3d at 1003—which is expected this summer, *see* Ex. C at 2. That "sort[] of injur[y], i.e., deprivations of temporally isolated opportunities, [is] exactly what preliminary injunctions are intended to relieve." *Bao Xiong*, 917 F.3d at 1003. In short, "if the injunction is denied," Member A will "suffer irreparable harm—namely, [Member A] will be prevented from trying out for" the scholarship "in probable violation of [Member A's] constitutional rights." *Id.*

C. The public interest and balance of the equities weigh in Do No Harm's favor.

The public interest favors granting an injunction. "[I]t is 'always in the public interest to prevent the violation of a party's constitutional rights.'" *Brandt v. Rutledge*, 47 F.4th 661, 671-72 (8th Cir. 2022) (quoting *Bao Xiong*, 917 F.3d at 1004). Indeed, there is an overriding public interest in rooting out racial discrimination, especially by the government. Because Defendant is violating equal-protection rights, "the public interest … factor favors" Do No Harm. *See Bao Xiong*, 917 F.3d at 1003-04.

The balance of the equities also favors Do No Harm. "If the injunction is granted," Member A may apply to AMHC and compete on an equal footing. *See id.* at 1004. "The negative public consequences of such an allowance, if any, will be slight." *See id.* "On the other hand, if the injunction is denied, [Member A] will continue to suffer irreparable harm—namely, [Member A] will be prevented from" competing on an equal footing "in probable violation of [Member A's] constitutional rights." *See id.* So the "balance of harms is decidedly in" Do No Harm's favor. *See id.*

CONCLUSION

For all these reasons, this Court should grant Do No Harm's motion for a temporary restraining order **as soon as possible** and its motion for preliminary injunction **by May 31, 2023**. This Court should grant a temporary restraining order and a preliminary injunction barring Defendant from selecting scholarship recipients using the existing, racially exclusionary criteria during the pendency of

this action. Defendant should be preliminarily "enjoined from enforcing that part of the qualifications for entry into the [scholarship] which require that the applicant be of the African-American [or other nonwhite] race[s]." *See Kirwan*, 38 F.3d at 162.

Dated: April 26, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I filed this memorandum with the Court via ECF. Because Defendant has not yet entered an appearance, I am also serving the motion, this memorandum, the exhibits, and the declarations by certified mail, returned receipt requested, at Defendant's address below. I am also sending copies of the same by certified mail, return receipt requested, to the Chair of the Arkansas Minority Health Commission and the Attorney General of Arkansas, at the addresses below.

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Dated: April 26, 2023

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