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June 11, 2025

VIA ELECTRONIC MAIL ONLY: **Lucila.Rosas@hhs.gov; David.Hyams@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: Reconsideration Request - Civil Rights Complaint Against Cleveland Clinic Pursuant to Title VI and Section 1557 of the ACA (HHS-OCR Transaction No. 24-585977)

Dear Ms. Rosas and Mr. Hyams:

On behalf of its client, Do No Harm ("DNH"), the Wisconsin Institute for Law & Liberty ("WILL") requests that the Office of Civil Rights for the U.S. Department of Health and Human Services ("HHS-OCR") reconsider DNH's civil rights complaint against the Cleveland Clinic pursuant to Title VI of the Civil Rights Act of 1964 and Section 1557 of the Affordable Care Act ("ACA").

This complaint, initially submitted on August 14, 2024, set forth two specific examples of race discrimination at Cleveland Clinic: the Minority Stroke Program and the Minority Men's Health Center. On September 10, 2024, HHS-OCR, indicated that it had received and accepted the matter for investigation. On January 20, 2025, a new presidential administration took effect, resulting in a period of transition. On May 2, 2025, an HHS policy advisor responded to WILL's request for an update on the status of the complaint, indicating that the matter had been closed on January 14, 2025.[1] Prior to the May 2 response, WILL received no indication of any action on the open investigation or closure of the matter. Included in the policy advisor's response was a Word draft of HHS-OCR's closure letter, which specifies the January 2025 closure date and is signed by Associate Deputy Director Daniel Shieh. It appears as if the closure letter was drafted in January but not sent to WILL until after our May 2 inquiry.

Problematically, in addition to being far delayed, the closure letter is unclear and does not appear to apply or even address the applicable legal standards of equal protection. The letter begins with a restatement of HHS-OCR's correct determination following its decision

[1] *See* 45 C.F.R. § 80.7(d)(2) (requiring HHS to notice complainants in writing when an investigation does not warrant enforcement action).

to open an investigation that "Cleveland Clinic is a health program or activity that receives FFA" (federal financial assistance) "and is therefore subject to [Title VI and Section 1557 of the ACA]."[2] However, following this reconfirmation, the letter concludes with a brief indication that "OCR is now closing this complaint" because "OCR has determined that Cleveland Clinic's response to OCR's technical assistance"—provided "based on OCR's review of the factual record"—"currently resolves OCR's concerns."[3]

Whatever such "technical assistance" and "response" thereto might have been, to date, the Cleveland Clinic continues to promote its discriminatory "Minority Stroke Program" as a special program within its general "Stroke Program";[4] as a program that is "dedicated to preventing and treating stroke in racial and ethnic minorities";[5] and as a program purposed with the "goal … to increase stroke awareness among minority groups in order to lower stroke rates and improve stroke outcomes," particularly for "Black Americans" and "Latinos."[6] The program boasts of numerous benefits for addressing strokes—including, for example, prevention and education, treatment and monitoring, referrals, coaching, prescription assistance, support groups, and transportation assistance—and is administered by "[t]he Minority Stroke Program team," which is trained to address strokes in minority populations.[7] As noted in our initial complaint, and as is still true today, the Minority Stroke Program is race-based.[8]

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[2] Letter from HHS-OCR to WILL regarding Transaction No. 24-585977 (Jan. 14, 2025) as provided by HHS-OCR on May, 2, 2025.

[3] *Id.*

[4] Cleveland Clinic - Cerebrovascular Center, *Stroke Program*, available at: https://my.clevelandclinic.org/departments/neurological/depts/cerebrovascular#stroke-program-tab (last visited June 6, 2025), archived also here.

[5] *Id.* ("Cleveland Clinic has one of the highest stroke-related patient practices in North America" "including a team dedicated to preventing and treating stroke in racial and ethnic minorities through our Minority Stroke Program.").

[6] Cleveland Clinic - Cerebrovascular Center, Minority Stroke Program, available at: https://my.clevelandclinic.org/departments/neurological/depts/cerebrovascular/minority-stroke-program (last visited June 6, 2025), archived also here.

[7] Cleveland Clinic - Cerebrovascular Center, Minority Stroke Program, available at: https://my.clevelandclinic.org/departments/neurological/depts/cerebrovascular/minority-stroke-program (last visited June 6, 2025), archived also here; Cleveland Clinic - Consult QD, *Closing Racial Gaps in Cerebrovascular Mortality* (Mar. 30, 2022), available at: https://consultqd.clevelandclinic.org/closing-racial-gaps-in-cerebrovascular-mortality, (last visited June 6, 2025), archived also here (The Minority Stroke Program's "physicians … are trained to address the higher rates of stroke in minority populations"); Cleveland Clinic - Cerebrovascular Center, *Stroke Program*, available at: https://my.clevelandclinic.org/departments/neurological/depts/cerebrovascular#stroke-program-tab (last visited June 6, 2025), archived also here (noting the "dedicated" minority stroke team).

[8] Following WILL's complaint on August 14, 2024, the Cleveland Clinic quietly began altering, removing, or otherwise relocating certain website content and/or web addresses, including content pertaining to the "Minority Men's Health Center." The webpage for the Minority Men's Health Center, as it existed prior to the complaint on August 8, 2024, can be found here.

The Cleveland Clinic's continued operation of this minority-only program means that OCR's disposition (as communicated through its closure letter) *failed* to correctly resolve this matter under Title VI's and the ACA's standards of equality.

Looking briefly to those standards, the United States Supreme Court has repeatedly "explained that discrimination that violates [the Constitution's guarantee of equal protection] committed by an institution that accepts federal funds also constitutes a violation of Title VI."[9] The "touchstone" of an equal protection violation is "[p]roof of [a] racially discriminatory intent or purpose," whether in whole or in part.[10] Among such forbidden discriminatory objectives are those that seek racial parity for the sake of a "desire [for] some specified percentage" or level of balance between "particular group[s] merely because of … race or ethnic origin."[11] Indeed, interests in racially motivated action aimed at mitigating general societal disparities or attaining some measure of "racial balancing" have been "long rejected" as "patently unconstitutional" and therefore also prohibited by Title VI and the ACA.[12] Likewise, the Supreme Court has long since rejected the race-based "doctrine of 'separate but equal'" as "ha[ving] no place" in our society, because "[s]eparate … [is] inherently unequal."[13] Under these principles, Cleveland Clinic's Minority Stroke Program violates Title VI and the ACA.

In the first place, Cleveland Clinic's establishment of a special Minority Stroke Program evinces its impermissible intent and purpose to use race to invite some to receive its services but not others. It is self-evident that a sign or designation suggesting that a service is for a particular racial group is intended to be instructive and creates the impression that the business is less willing or unwilling to serve or welcome people outside of that racial group, even if the business doesn't actually exclude them. For example, a sign indicating a service for "whites" communicates, at a minimum, a discriminatory preference for whites, and preferentially encourages whites to seek the service while deterring racial minorities. Because this demeaning race-based alienation causes harm, the law does *not* require the

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[9] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. ("SFFA")*, 600 U.S. 181, n.2 (2023) (citation and internal quotation marks omitted).

[10] *E.g.*, *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977) (discussing and citing cases).

[11] *E.g.*, *SFFA*, 600 U.S. at 208–09, 211, 223 (citations and internal quotation marks omitted).

[12] *Id.* at 223, 226. 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 June 6, 2025) (discussing Title VI and ACA protections and prohibitions against racial discrimination concurrently).

[13] *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954); *SFFA*, 600 U.S. at 203–06 ("Separate cannot be equal") (recounting various illegal constructs of race-based segregation).

ostensibly unwelcomed minority to seek any further.[14] In any event, the fact that additional inquiry may be needed under such circumstances only *further emphasizes* the discriminatory inequality at play, since white individuals, who are explicitly welcomed, would *not* need to take such further steps or make additional inquiries to confirm whether their race was a disqualifier.[15]

So too here. Cleveland Clinic's Minority Stroke Program indicates, by name and description, that services are for racial minorities and consequently, that individuals who are not members of racial or ethnic minorities—including certain members of DNH, who encountered this discrimination—are ineligible or disfavored. Moreover, any questions on who the program is for are resolved by the Clinic's *repeated* confirmations of its discriminatory intent to "dedicate[]" its special program to "treating stroke in racial and ethnic minorities," who "tend to" have high stroke rates.[16] Similarly, the Clinic expressly maintains the "focused" "goal" of "increas[ing] stroke awareness among minority groups in order to lower stroke rates and improve stroke outcomes."[17, 18]

These admissions reveal that the whole point of the Minority Stroke Program is to mitigate general societal disparities and balance the scales of stroke mortality and morbidity, looking to nothing more than skin pigmentation. Further confirming these "patently" illegitimate interests in mitigating societal discrimination and achieving racial balance with respect to stroke outcomes,[19] Cleveland Clinic explains that the program was "launched"

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[14] *E.g.*, *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 365 (1977) (confirming that a "sign" inviting "whites" announces a policy of racial discrimination and that victims are not "limited to the few who ignore[] the sign and subject[] themselves to personal rebuffs"); *Heckler v. Mathews*, 465 U.S. 728, 739–40 (1984) (recognizing the Court's "repeated[] emphasi[s]" on the "stigmatizing" effect of racial discrimination as a "serious non-economic injur[y]"); *Moore v. U.S. Dep't of Agric. on Behalf of Farmers Home Admin.*, 993 F.2d 1222, 1224 (5th Cir. 1993) ("The badge of inequality and stigmatization conferred by racial discrimination is a cognizable harm in and of itself").

[15] *E.g.*, *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 508 U.S. 656, 666 (1993) (an equal protection injury occurs when a legally-bound actor "erects a barrier that makes it more difficult for members of one [racial] group to obtain a benefit than it is for members of another [racial] group").

[16] Cleveland Clinic - Cerebrovascular Center, *Stroke Program*, available at: https://my.clevelandclinic.org/departments/neurological/depts/cerebrovascular#stroke-program-tab (last visited June 6, 2025), archived also here; Cleveland Clinic - Cerebrovascular Center, Minority Stroke Program, available at: https://my.clevelandclinic.org/departments/neurological/depts/cerebrovascular/minority-stroke-program (last visited June 6, 2025), archived also here.

[17] Cleveland Clinic - Cerebrovascular Center, Minority Stroke Program, available at: https://my.clevelandclinic.org/departments/neurological/depts/cerebrovascular/minority-stroke-program (last visited June 6, 2025), archived also here.

[18] Against Cleveland Clinic's representations, it is futile for individuals who are not "racial and ethnic minorities" to further seek or inquire about the Minority Stroke Program. *Teamsters*, 431 U.S. at 365–66 (refusing to require victims of racial discrimination to engage in "futile gesture[s]" of inquiry to demonstrate an equal protection injury).

[19] *SFFA*, 600 U.S. at 223, 226.

because "[t]he risk of stroke in minorities can be up to 2.5 times higher than that in the general population."[20]

Notably, these goals (reducing racial disparities and ensuring racial balance) often seem to involve a mix of logical fallacies with respect to perceived issues—namely, the conflation of correlation with causation, in which a racial correlation is improperly perceived to imply that race is the cause of a given issue and whereby race is inappropriately used as a proxy for legitimate causal factors. This inappropriate use of race as a health risk is an irresponsible and dangerous practice and has undoubtedly led many individuals to misunderstand their risk for disease and other health conditions.

If treating disparities and balancing health outcomes are valid goals, then federal funds may be, likewise, used for special programming "dedicated to preventing and treating" whites for conditions that are more predominant in this population—among them, Parkinson's Disease,[21] type 1 diabetes,[22] osteoporosis,[23] and multiple sclerosis ("MS").[24]

There can be no question that a "Whites MS Program" would be an appalling and unlawful endeavor. Likewise, there is nothing difficult about concluding that a program designed and designated for racial minorities and repeatedly emphasized as such is racially discriminatory, and HHS-OCR should have determined as much. The principles of equal protection do not change just because a program is "dedicated" to minorities instead of whites.[25]

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[20] Cleveland Clinic, Consult QD, *Tailoring Stroke Treatment and Prevention to Populations Who Need It Most* (Apr. 21, 2020), available here; Cleveland Clinic - Consult QD, *Closing Racial Gaps in Cerebrovascular Mortality* (Mar. 30, 2022), available at: https://consultqd.clevelandclinic.org/closing-racial-gaps-in-cerebrovascular-mortality, (last visited June 6, 2025), archived also here (describing also program growth, including employment of additional physicians and expansion to other locations); Cleveland Clinic - Cerebrovascular Center, Minority Stroke Program, available at: https://my.clevelandclinic.org/departments/neurological/depts/cerebrovascular/minority-stroke-program (last visited June 6, 2025), archived also here (purporting to describe stroke outcomes by race).

[21] Allison Wright Willis *et al.*, *Geographic and Ethnic Variation in Parkinson Disease: A Population-Based Study of US Medicare Beneficiaries*, Neuroepidemiology 34(3): 143–51 (Jan. 15, 2010), available here.

[22] Centers for Disease Control, *Diabetes - Type 1 diabetes* (May 15, 2024), available here.

[23] Jane A. Cauley, *Defining Ethnic and Racial Differences in Osteoporosis and Fragility Fractures*, Clinical Orthopaedics & Related Research 469(7):1891–99 (Mar. 23, 2011), available here.

[24] Medical Press, *Whites have the highest prevalence of multiple sclerosis in the United States* (May 17, 2023), available here (citing Michael Hittle *et al.*, *Population-Based Estimates for the Prevalence of Multiple Sclerosis in the United States by Race, Ethnicity, Age, Sex, and Geographic Region*, JAMA Neurol. 80(7): 693–701 (2023)).

[25] *E.g.*, *SFFA*, 600 U.S. at 206 (the principles of equal protection "appl[y] without regard to any differences of race, of color, or of nationality—it is universal in its application. For the guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color") (citations, internal brackets, and quotation marks omitted).

As if this all were not enough, in establishing this minority program, the Cleveland Clinic has also established an "inherently unequal," separatist system of care based on race.[26] While the Clinic might indeed extend help to everyone, *if it did so equally, it would not designate a special "Minority Stroke Program"* couched within its general stroke program. Indeed, the Clinic has further confirmed this segregated construct, explaining that the "overall components" of the Minority Stroke Program "resemble those offered to all patients, [except that] they are tailored to minorities."[27]

Further, as noted in footnote 8 above, following WILL's complaint, the Cleveland Clinic began altering previous content and references to its "Minority Men's Health Center." The removal of this content was not accompanied by assurances that the Cleveland Clinic has discontinued, or appropriately revised, its race-based Minority Men's Health Center, or any other explanation as to the status of the Minority Men's Health Center. Moreover, traces of this minority program still remain.[28]

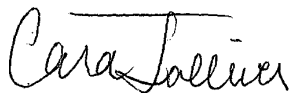
The equal protection principles outlined in this letter with respect to the Cleveland Clinic's Minority Stroke Program apply equally to the Minority Men's Health Center. The removal of the references to the latter program and potential indications of continued operation, at a minimum, call for an investigation as to what the Cleveland Clinic has done with respect to that program.

* * *

For the foregoing reasons—as well as those contained in the original complaint submitted on August 14, 2024—we ask that HHS-OCR reconsider this matter in accordance with equal protection precedent and find that Cleveland Clinic's racially motivated creation and continuation of its Minority Stroke Program (and Minority Men's Health Center) are discriminatory in violation of Title VI and the ACA.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Cara Tolliver
Associate Counsel

[26] *Brown*, 347 U.S. at 495; *SFFA*, 600 U.S. at 203.

[27] Cleveland Clinic, Consult QD, *Tailoring Stroke Treatment and Prevention to Populations Who Need It Most* (Apr. 21, 2020), available here.

[28] Cleveland Clinic – Info. Sheet on Minority Men's Health Center services, available at: here (last visited June 10, 2025), archived also here. *See also* the Minority Men's Health Center webpage as it existed on August 8, 2024, prior to WILL's complaint, here.