



U.S. Department of Justice

Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

December 22, 2025

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

Re: Race-Based Classifications in the Ronald E. McNair Postbaccalaureate
Achievement Program

Dear Mr. Speaker:

Consistent with 28 U.S.C. 530D, I write to advise you that the Department of Justice (Department) has concluded that certain aspects of the Ronald E. McNair Postbaccalaureate Achievement Program (McNair program) violate the Constitution, that the Department will no longer defend those aspects of the program in court, and that the Department will be taking that position in ongoing litigation. See *Young Americans for Freedom v. U.S. Dep't of Educ.*, No. 24-cv-163 (D.N.D.). Specifically, the Department has determined that statutory and regulatory provisions governing the McNair program are unconstitutional to the extent they classify individuals based on race.

Congress enacted the McNair program "to provide disadvantaged college students with effective preparation for doctoral study." 20 U.S.C. 1070a-15(a). Under the program, the Secretary of Education awards grants to institutions of higher education for projects designed to achieve that purpose. 20 U.S.C. 1070a-15(b) and (c). By statute, any grantee that receives funds for such a project must assure the Secretary of Education that "not less than two-thirds" of the students participating in the project are "low-income individuals who are first generation college students," 20 U.S.C. 1070a-15(d)(1), and that "the remaining persons participating in the project" are "from a group that is underrepresented in graduate education," 20 U.S.C. 1070a-15(d)(2). The statute identifies "Alaska Natives," "Native Hawaiians," and "Native American Pacific Islanders" as "group[s] that [are] underrepresented in graduate education." *Ibid.* The statute's implementing regulations identify those same groups and three others—"Black (non-Hispanic)," "Hispanic," and "American Indian"—as "ethnic and racial groups" that are "underrepresented in graduate education." 34 C.F.R. 647.7(b); see 34 C.F.R. 647.3(c)(2); see also 34 C.F.R. 647.21(d)(1)(iii) (identifying, as one of the "criteria" that the Secretary "uses" to "evaluate an application for a new grant," "the procedures" that the applicant will "use[] to employ members of groups underrepresented in higher education, including Blacks, Hispanics, American Indians, Alaska Natives, Asian Americans and Pacific Islanders (including Native Hawaiians)"). In *Young Americans for Freedom*, plaintiffs have challenged the constitutionality

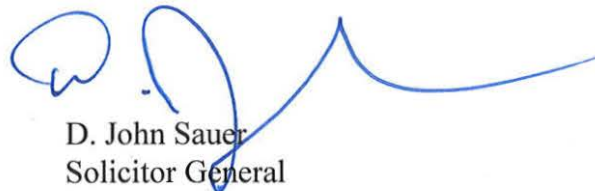
of the statute's and the regulations' race-based classifications, arguing that they violate the equal protection component of the Fifth Amendment's Due Process Clause.

In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023) (*SFFA*), the Supreme Court held that race-based preferences in the admissions programs at Harvard and the University of North Carolina violated the Fourteenth Amendment's Equal Protection Clause. *Id.* at 213. In so holding, the Court rejected the argument that race-based admissions programs can be justified by the government's interest in "remedy[ing] the effects of societal discrimination." *Id.* at 226. In addition, the Court explained that by relying on "racial categories" that were "arbitrary," "overbroad," and "underinclusive," the admissions programs at issue had "fail[ed] to articulate a meaningful connection between the means they employ and the goals they pursue." *Id.* at 215-216. The Court also emphasized that the programs' reliance on race had no "logical end point." *Id.* at 221 (citation omitted).

The Department has now determined that the statutory and regulatory provisions governing the McNair program are unconstitutional to the extent they classify individuals based on race. In light of the Supreme Court's decision in *SFFA*, the Department has determined that an interest in remedying the effects of societal discrimination—to the extent Congress expressed such an interest here—cannot justify the McNair program's use of race-based classifications. The Department has also determined that, as in *SFFA*, those classifications rely on arbitrary, overbroad, and underinclusive racial categories and lack any logical end point. For those reasons, the Department will no longer defend the constitutionality of the McNair program's use of race-based classifications. The Department, however, continues to defend other aspects of the McNair program that employ race-neutral criteria. The Department of Education has also informed this Office that it will cease enforcing these unconstitutional provisions and will operate the program in a race-neutral manner.

Please let me know if I can be of further assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. John Sauer", with a long horizontal flourish extending to the right.

D. John Sauer
Solicitor General