



January 18, 2023

Margaret Leinen, Director
Vashan Wright, Assistant Professor
Scripps Institution of Oceanography
University of California, San Diego
9500 Gilman Drive
La Jolla, CA 92093

Sent via email

Dear Director Leinen and Professor Wright:

I am an attorney at the Foundation Against Intolerance & Racism (FAIR), a nonpartisan, nonprofit organization dedicated to advancing civil rights and promoting a common culture based on fairness, understanding, and humanity. Our website, fairforall.org, can give you a fuller sense of our identity and activities.

We write in response to an [incident report](#) submitted to FAIR on December 29, 2022 through our transparency website, fairtransparency.org, regarding a summit and conference sponsored by the Scripps Institution of Oceanography. The report states:

A professor at the University of California San Diego and Scripps Institution for Oceanography is using a public grant from the US National Science Foundation to plan a professional summit for “Geoscientists of Color only.”

The report includes links to the summit website and the National Science Foundation’s grant award, which will be used to fund the summit. The award abstract states that “[l]eaders at the summit will be Geoscientists of Color preferentially” and those leaders “will design a conference where ~100-300 Geoscientists of Color attend.” Professor Wright is listed as the Principal Investigator for the award. His social media account has featured several posts about the summit and conference, stating that only “geoscientists of color” may attend. For example,

- “Apply to join the team that plans the first conference for Geoscientists of Color only!”
- We seek Geoscientists of Color....”
- “I want to create a conference for only Geoscientists of Color.”
- “If you identify as a Geoscientist of Color, I invite you to join us.”

See Attachment A (screenshots). It appears those posts were recently deleted, just days before the application deadline.

The summit website's "About" page was recently changed to state that "all geoscientists" are welcome. However, the above-referenced statements and language still on the website call that into question. The "Join" page, which houses the application, states, "We seek 15 applicants who are women, veterans, persons with disabilities, and underrepresented minorities in the geosciences and social sciences."

As an organization committed to pro-human anti-racism, FAIR supports efforts to achieve greater diversity within scientific fields. However, the California Constitution prohibits state universities from discriminating against individuals or granting preferential treatment based on skin color or racial classification:

The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. ...

For the purposes of this section, "State" shall include, but not necessarily be limited to, the State itself, any city, county, city and county, public university system, including the University of California, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the State.

Cal. Const. Art. 1, § 31. Courts have upheld that prohibition, invalidating government preferences or other forms of discrimination. *See, e.g., Hi-Voltage Wire Works, Inc. v. City of San Jose*, 24 Cal. 4th 537, 560-2 (2000) (municipal program requiring city contractors to utilize a minimum percentage of minority subcontractors or document outreach efforts to include them violated California Constitution's anti-discrimination provision); *Connerly v. State Personnel Bd.*, 92 Cal. App. 4th 16, 47-64 (Cal. Ct. App. 2001) ("race conscious" preferences undertaken by the state to allegedly benefit underrepresented groups violated California Constitution's anti-discrimination protection).

According to the grant award abstract, summit leaders "will be Geoscientists of Color preferentially" and at least 100 to 300 conference spots will be set aside based on skin color. The summit's "Join" page states that a number of seats will be set aside for underrepresented minorities and women. Moreover, the conference is referred to as for "Geoscientists of Color," necessarily excluding those who are qualified but do not consider themselves "of color." Professor Wright's previous social media statements supported that, unambiguously stating the summit and conference are "only" for "Geoscientists of Color." The California Constitution forbids such exclusions, preferences, and set-asides.

We also believe the exclusions, preferences, and set-asides would violate the Fourteenth Amendment and Title VI of the Civil Rights Act, which prohibit public institutions and recipients of federal funds (such as Scripps) from discriminating based on racial classification. U.S. Const. Amend. XIV § 1; 42 U.S.C. § 2000d, d-4a; *Shaw v. Hunt*, 517 U.S. 899, 908 (1996). Unlike the California Constitution (which prohibits state discrimination and preferences without exception), the Fourteenth Amendment and Title VI have been interpreted to permit limited preferences, but even then, only in the most exceptional circumstances. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist.*, 551 U.S. 701, 720-3 (2007). Specifically, a public institution may use limited preferences as part of the college admissions process or to remedy specific

instances of past discrimination in the industry and locality at issue. *Grutter v. Bollinger*, 539 U.S. 306, 328-33 (2003); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 498-504 (1989). Neither appears to be the case here. The summit and conference are not part of the University's admissions process, and there is no evidence (strong or otherwise) that would support constitutionally permissible remedial discrimination.

FAIR supports efforts towards greater diversity in professional and scientific fields. There are lawful ways to achieve that goal, such as outreach efforts that are consistent with the California Constitution's anti-discrimination provision. See *Hi-Voltage*, 24 Cal. 4th at 564-5 (invalidating city's outreach policy in that case but noting that other forms of outreach may be constitutional). While we are pleased that Professor Wright's social media posts were apparently deleted and some of the summit website language has been amended, we urge Scripps to:

- (i) further revise all materials, websites, social media posts, and other related materials to make clear that any qualified individual will be considered for the summit and conference, regardless of skin color or ancestry;
- (ii) structure the conference such that skin color will not be relevant in selecting or inviting attendees; and
- (iii) given that the application deadline is two days away and the social media posts and website language was changed only recently, issue a statement alerting potential applicants that the summit and conference are open to all interested and qualified geoscientists. Additionally, we urge Scripps to extend the application deadline by thirty days to ensure reasonable notice.

We believe those actions would demonstrate Scripps's commitment to anti-discrimination and creating an open and welcoming environment within the geosciences fields and University.

Please let us know within the next week if you intend to respond.

Very truly yours,

Leigh Ann O'Neill
Staff Attorney
Foundation Against Intolerance & Racism

cc: Aisha Morris, Program Director, Division of Earth Sciences, National Science Foundation
Allison Lerner, Inspector General, National Science Foundation