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August 28, 2017

The Honorable Virginia Foxx  
 Chairwoman  
 Committee on Education and the Workforce  
 2176 Rayburn House Office Building  
 Washington, DC 20515

Dear Chairwoman Foxx:

I write to request that the Committee on Education and the Workforce hold a hearing to examine how institutions of higher education are meeting their responsibility under Title VI of the Civil Rights Act, which prohibits discrimination on the basis of race, color, or national origin in "any program or activity receiving Federal financial assistance."<sup>1</sup> Specifically, students are to be welcomed to learn in environments free of harassment and intimidation on the basis of race, color, or national origin. A 1994 Title VI guidance issued by the Department of Education makes clear that institutions of higher education that are in receipt of Federal funds "have a responsibility to provide a nondiscriminatory educational environment" even though "the recipient may not be responsible directly for all harassing conduct."<sup>2</sup>

The Supreme Court in Brown v. Board of Education concluded, among other things, that education is "the very foundation of citizenship."<sup>3</sup> President Johnson championed the Higher Education Act and stated "education is the path to achievement and fulfillment; for the Nation, it is a path to a society that is not only free but civilized; and for the world, it is the path to peace—for it is education that places reason over force."<sup>4</sup> African American students and others overcame massive resistance to educational integration, and continue to endure harassment, intimidation, and discriminatory practices and policies – a direct violation of Title VI.

Earlier this month, it was revealed that the Department of Justice was pursuing "investigations and possible litigation related to intentional race-based discrimination in college and university admissions." The government's posture challenges settled law – i.e., "a university may institute a race-conscious admissions program as a means of obtaining the educational benefits that flow from student body diversity" – as pronounced by Justice Kennedy in Fisher II v. University of

<sup>1</sup> 42 U.S.C §§ 2000d.

<sup>2</sup> Notice of Investigative Guidance, Racial Harassment (59 Fed. Reg. 11448, Mar. 10, 1994).

<sup>3</sup> 347 U.S. 483, 493 (1954).

<sup>4</sup> Remarks at Southwest Texas State College Upon Signing the Higher Education Act of 1965 (November 8, 1965)

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Texas at Austin.<sup>5</sup> Moreover, it flies in the face of the very real racial biases that afflict students of color in their quest for quality education. It ignores the advantages afforded to university legacy students, students who benefit from families of wealthy donors, or students who receive additional credit for taking advanced courses that are too often not available to students of color or poor students due to the inequities in the educational system. That is why the Departments of Justice and Education issued a clarifying document following the Fisher II ruling explaining that institutions of higher education “can take account of an individual applicant’s race as one of several factors in their admissions programs as long as the program is narrowly tailored to achieve that compelling interest.”<sup>6</sup> Additionally, the efforts of affirmative action programs to diversify higher education ring hollow if students of color are left to their own devices as they navigate the hostile racial environment of campuses at some predominantly white institutions.

Within two weeks of this Administration’s plan to investigate affirmative action programs, a mob of torch-wielding racists descended on the University of Virginia (UVa) and marched through university grounds chanting racial epithets and intimidating students and faculty. While the extreme visuals of that day shocked many, for students of color it was only a more extreme version of the harassment and acts of intimidation they experience as part of the hostile racial climates on too many campuses. Yet, the alarms sounded by students of color about acts of racial hostility on America’s campuses are, too often, countered with claims that such acts are protected by the First Amendment, without regard for student rights under Title VI of the Civil Rights Act.

In reality, racial harassment and bullying are violations of Title VI, and compliance with the law is enforceable by the Office for Civil Rights at the Department of Education. The 1994 guidance states that “a racially hostile environment that is created, encouraged, accepted, tolerated or left uncorrected by a recipient also constitutes different treatment on the basis of race in violation of [T]itle VI.”<sup>7</sup> Additionally, the Clery Act requires institutions of higher education to report campus crime statistics, issue warnings and emergency notifications, and establish and disseminate campus safety and security policies. As a result, schools must address incidents motivated by bias, including larceny-theft, simple assault, intimidation, or destruction/damage/vandalism of property.

Members of the Committee would greatly benefit from open dialogue with officials from higher education, the Departments of Education and Justice, the Clery Center, and other stakeholders concerning hostile racial climates on campuses, the continued need for affirmative action to increase diversity in higher education, and the responsibility of universities to provide a safe learning environment. I appeal to your expertise as both the Chair of the Committee on Education and the Workforce and former President of Mayland Community College to convene a hearing and engender that dialogue since we must all go beyond simply recognizing the value of diversity and implement policies that will improve diversity and provide welcoming, safe, learning environments on campuses.

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<sup>5</sup> 136 S. Ct. 2198, 2210 (2016).

<sup>6</sup> Department of Justice and Department of Education Questions and Answer About Fisher v. University of Texas Austin II, <https://www2.ed.gov/about/offices/list/ocr/docs/qa-fisher-ii-201609.pdf>.

<sup>7</sup> Notice of Investigative Guidance, Racial Harassment (59 Fed. Reg. 11448, Mar. 10, 1994).

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I thank you for your attention to this critical issue and look forward to your response. Please contact Véronique Pluviose, General Counsel, at (202) 226-9401 or [veronique.pluviose@mail.house.gov](mailto:veronique.pluviose@mail.house.gov) regarding your decision on this request.

Sincerely,



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**ROBERT C. "BOBBY" SCOTT**

Ranking Member

