

Another Attack on Diversity and Inclusivity Efforts Post Students for Fair Admissions (SFFA) Supreme Court Decision

Description

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The American Alliance for Equal Rights (AAER) filed suit against McDonald's in federal court over the corporation's scholarship program for high school students of Hispanic and Latino descent, the Hispanic American Commitment to Educational Resources ("HACER") program.^[1] The complaint alleges the scholarship program is racially discriminatory in violation of 42 U.S.C. §1981 ("§1981"), which prohibits private entities from racially discriminating in the making of contracts.^[2] The complaint seeks a preliminary injunction to prevent McDonald's from making any scholarship distributions, essentially halting the program until a decision is made.^[3]

This complaint comes just one week after McDonald's announced its 2025 plan to reform the corporation's diversity and inclusivity procedures in light of "the shifting legal landscape," citing to the *Students for Fair Admissions, inc. v. President and Fellows of Harvard College* 2023 Supreme Court ruling (the "SFFA Decision")^[4] Within its announcement of change, McDonald's published its retirement of the corporation's Supply Chain's Mutual Commitment to DEI pledge and "setting aspirational representation goals".^[5] Additionally, the corporation has changed the official name of its diversity team to "the Global Inclusion Team."^[6] The HACER program itself was not mentioned in the 2025 plan announcement.^[7]

The HACER program is a national scholarship program which provides high school students with financial assistance for their pursuit of a higher education.^[8] The program makes distributions to up to 30 exceptional Hispanic and Latino high school students annually.^[9] The program represents and furthers "McDonald's long-standing commitment to feeding and fostering the diverse communities it serves."^[10]

AAER seeks to halt the HACER program alleging racial discrimination in violation of §1981.^[11] AAER alleges that the HACER program is contract and therefore subject to §1981.^[12] AAER cited its recent favorable decision in *American Allegiance for Equal Rights v. Fearless Fund* to support this allegation.^[13] In the Fearless Fund decision the court upheld a preliminary injunction against the Fearless Fund for its granting program to black women entrepreneurs.^[14] AAER argues that the HACER program requirements of a personal statement, agreement to a privacy policy, authorization to store personal information, and agreement to the terms and conditions of the program make the program a contract and therefore subject to §1981.^[15]

This complaint is another instance representing the legal tensions surrounding diversity and inclusivity efforts in the United States since the SFFA Decision. Please engage [Elizabeth O. Manchester](#), [Russell J. Stein](#), or [Kelley J. O'Donnell](#) if you have questions or concerns regarding legal compliance of your organization's diversity and inclusivity practices.

^[1] Nate Raymond, *McDonald's sued over Latino scholarships despite rolling back diversity initiatives*, USA TODAY (Jan. 14, 2025, 11:32 AM), McDonald's faces legal challenge over decades-old scholarship program.

^[2] Complaint at 2, *American Alliance For Equal Rights v. McDonald's Corporation; McDonald's USA, LLC; and International Scholarship & Tuition Services, Inc.*, (M.D. Tenn. 2025) (No. 3:25-cv-00050).

^[3] *Id.*

[4] *Our Commitment to Inclusion at McDonald's*, Corporate.McDonalds.Com (Jan. 6, 2025), *Our Commitment to Inclusion at McDonald's*.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Write the Next Chapter of Your Story with The McDonald's HACER National Scholarship*, McDonalds.Com, McDonald's HACER® National Scholarship | McDonald's.

[9] *Id.*

[10] *Id.*

[11] Complaint at 2-3.

[12] *Id.*

[13] *Id.* at 11.

[14] *Id.*

[15] *Id.* at 10-13.

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