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October 17, 2023

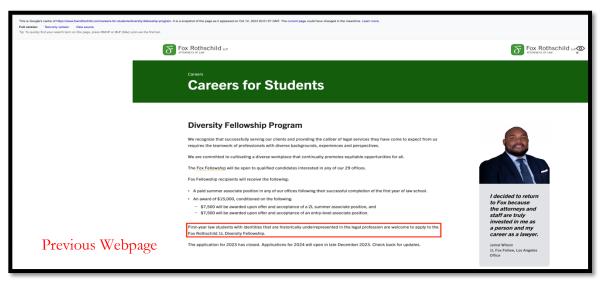
Jeffrey P. MacHarg Fox Rothschild LLP 101 N. Tryon Street, Suite 1300 Charlotte, NC 28246 (704) 384-2600

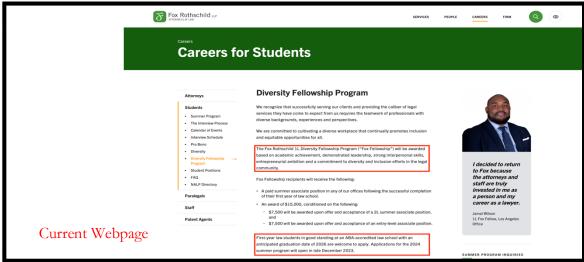
Dear Mr. MacHarg:

I am writing on behalf of my client, the American Alliance for Equal Rights—a membership organization of 1Ls and others who oppose racial classifications. For years, Fox Rothschild has run the "Fox Rothschild 1L Diversity Fellowship." *See* NALP, *Fox Rothschild LLP – Recruiting & Hiring*, perma.cc/55B6-VHR9. To participate, "applicants must" be members of "underrepresented racial/ethnic groups" or otherwise identify as "members of groups that are historically underrepresented in the legal profession." *Id.* The application deadline for the "1L Diversity Fellowship Program" is "[l]ikely January 2024." *Id.* 

The Alliance has challenged similar "diversity fellowships" at other law firms. See Monnay, Morrison Foerster Changes DEI Fellowship Criteria Amid Lawsuit, Bloomberg (Sept. 6, 2023), perma.cc/BQ7U-L67B; Raymond, Second Major US Law Firm Changes Diversity Fellowship After Lawsuit, Reuters (Oct. 6. 2023), perma.cc/6NB7-QNCU. One case ended when Perkins Coie changed its program and stipulated (1) that "Membership in a group historically underrepresented in the legal profession is not required under the new program"; (2) that Perkins will "not ask or require applicants to identify their race when applying"; and (3) that Perkins will not "rever[t] to a summer associate fellowship program that requires an applicant to be a member of a historically underrepresented group." Dkt. 31, AAER v. Perkins Coie LLP, No. 3:23-cv-01877-L (N.D. Tex.). Morrison & Foerster agreed to a similar stipulation after it changed a similar program. See Dkt. 39, AAER v. Morrison & Foerster LLP, No. 1:23-cv-23189-KMW (S.D. Fla.). In both cases, the firms agreed to consider only an applicant's individualized "discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise." Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 230 (2023). "In other words," consideration for those fellowships is now "based on [an applicant's] experiences as an individual—not on the basis of race." Id. at 231.

Fox appears to have made similar changes to its program. In the last few days, Fox scrubbed any mention of the program's racial requirement on its webpage. *See Diversity Fellow-ship Program*, perma.cc/2F32-H7LE. Instead of being explicitly race-based, the program now "will be awarded based on ... a commitment to diversity and inclusion efforts in the legal community." *Id*.





That Fox's program appears to be no longer explicitly race-based is a positive development; but the Alliance remains concerned that, in application, the program will continue to consider race. In the hopes of avoiding litigation over this issue, the Alliance asks that you answer the following questions by October 20, 2023:

- 1. Did Fox, in fact, change its 1L Diversity Fellowship for 2024?
- 2. If so, will the new fellowship refrain from asking participants about their race? Will it consider race as a factor when making selections?
- 3. If the new fellowship considers race in any way, what role will race play?

We look forward to your response.

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