

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

MICHELLE DOE,  
Plaintiff,

-against-

DEPARTMENT OF HEALTH AND HUMAN SERVICES,  
DONNA SHALALA, NATIONAL INSTITUTES OF HEALTH,  
HAROLD E. VARMUS, JUDITH VAITUKAITIS, MARY  
NIEMIEC, DEPARTMENT OF AGRICULTURE,  
DANIEL GLICKMAN, ROBERT ROBINSON,  
McKINLEY MAYES, LILLIE DAVIS, TEXAS A&M  
UNIVERSITY, EDWARD A. FUNKHOUSER, COMER O.  
PATTERSON, JAMES R. WILD, TERRY  
THOMAS, RICHARD EWING, GREG FOXWORTH,  
AND HOWARD HUGHES MEDICAL INSTITUTE,  
Defendants.

Civ. No. C-97-091  
Filed February 14, 1997

## COMPLAINT

1. This is an action to enjoin, and seek damages for, an unlawful policy of race discrimination. The defendants have all been involved with the Texas A&M University Minority High School Student Research Apprentice Program (the "Apprentice Program"), a paid summer program run by entities and individuals under color of state law, which utilizes both federal and state monies and is open only to individuals of particular races.

2. This action arises under the United States Constitution and other federal statutes, and this Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, and 5 U.S.C. § 702. Venue is proper in this Court over all defendants pursuant to 28 U.S.C. § 1391.

### Parties

#### **A. Plaintiff**

3. "Michelle Doe" is a pseudonym. The plaintiff is a 16-year old white girl and high school student in Corpus Christi, Texas. As set forth below, she wanted to participate in the Apprentice Program and could not do so solely because of her race.

#### **B. The HHS Defendants**

4. Defendant Department of Health and Human Services ("HHS") is a department of the executive branch of the United States government. Defendant Donna Shalala is Secretary of HHS and is the individual ultimately responsible for its policies. Pursuant to Title VI of the Civil Rights Act, 42 U.S.C. §§ 2000d, et seq., HHS has promulgated regulations "to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits

of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Health and Human Services." 45 CFR § 80.1.

5. Defendant National Institutes of Health (the "NIH") is an agency of the Public Health Service within HHS.

6. Defendants Harold E. Varmus, M.D., Judith Vaitukaitis, M.D., and Mary Niemiec, all work for the NIH and are sued in their official capacities only. As the Director of the NIH, Varmus is the individual ultimately responsible for its policies. NIH funds the Apprentice Program through a program within the National Center for Research Resources (NCRR), an entity within the NIH. Defendant Vaitukaitis is Director of NCRR and is ultimately responsible for its policies. Niemiec is a Section Grants Management Officer of NCRR's Office of Grants and Contracts Management. In that capacity, defendant Niemiec approved NIH's funding for the Apprentice Program despite its plainly unconstitutional racially-discriminatory policies.

### **C. The USDA Defendants**

7. Defendant Department of Agriculture ("USDA") is a Cabinet-level department of the executive branch of the United States government. Pursuant to Title VI of the Civil Rights Act, 42 U.S.C. §§ 2000d, et seq., the USDA has promulgated regulations "to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of an applicant or recipient receiving Federal financial assistance from the Department of Agriculture." 7 CFR § 15.1.

8. Defendants Daniel Glickman, Robert Robinson, McKinley Mayes and Lillie Davis all work for the USDA and are sued here in their official capacities only. As the Secretary of the USDA, Glickman is ultimately responsible for its policies. Robinson, Mayes, and Davis all work within the Cooperative State Research, Education, and Extension Service (CSREES), which sponsored the Apprentice Program in 1995. Robinson is administrator of CSREES and is ultimately responsible for its policies; his predecessor, William D. Carlson, announced CSREES sponsorship of the Research Apprentice Program for Minority High School Students (USDA-MHSS) in 1995. USDA-MHSS is administered by CSREES and is limited to students from racial and ethnic minority groups. Pursuant to USDA-MHSS, Mayes and Davis have approved USDA funding for the Apprentice Program since 1995 despite its plainly unconstitutional racially-discriminatory policies.

### **D. The A&M Defendants**

9. Defendant Texas A&M University ("A&M") is an educational institution authorized by Article 7, § 18 of the Texas State Constitution and funded by the State of Texas. Its activities, as described herein, were effected under color of state law. A&M's Department of Biology and Department of Biochemistry and Biophysics manage the operation of the Apprenticeship Program in conjunction with the Howard Hughes Medical Institute.

10. Defendants Edward A. Funkhouser, Comer O. Patterson, James R. Wild, Terry Thomas, Richard Ewing, and Greg Foxworth (who collectively will sometimes be referred to herein as the "individual A&M defendants") are employees or agents of A&M. Edward A. Funkhouser, Ph.D., is Associate Head for Undergraduate Education of the Department of Biochemistry and Biophysics. He and Comer O. Patterson, Ph.D., an associate professor in the Department of Biology, are Co-Directors of the Apprentice Program. The Apprentice Program was approved by Funkhouser and Patterson; defendant Wild, the head

of the Department of Biochemistry & Biophysics; defendant Thomas, the interim head of the department of biology; defendant Richard Ewing, Dean of the College of Science; and defendant Greg Foxworth, Director, Office of Sponsored Projects.

11. Defendant Howard Hughes Medical Institute (the "Institute") is a private institution of higher learning located in Chevy Chase, Maryland. The Institute collaborates with A&M in running the Apprentice Program on the campus of A&M. It does business in Texas and has transacted business related to the Apprentice Program in Texas through various agents including (but not limited to) the A&M defendants.

### Background

12. Since the summer of 1986, A&M's Department of Biochemistry and Biophysics and Department of Biology have annually administered the Apprentice Program as a six-week summer program on the A&M campus. The Apprentice Program introduces students to life-science related research and career opportunities in fields such as chemistry, biology, and genetics. Students who participate in the Apprentice Program engage in research under the supervision of a Biochemistry Department faculty member and meet outside the lab for weekly group discussions.

13. The Apprentice Program provides not only room and board but also pays each participant approximately \$925 in wages for the six-week period.

14. The Apprentice Program was, through 1995, affiliated with NIH's Minority High School Student Research Apprentice Program (NIH-MHSSRAP), which has supported similar programs at universities across America since 1980. Since the time of its creation, the NIH-MHSSRAP has limited its funding to programs that exclude whites.

15. In 1995, the Apprentice Program operated from funds provided by the State of Texas, the NIH, the USDA, Abbott Laboratories, and Howard Hughes Medical Institute.

16. Each of the state defendants and the Howard Hughes Medical Institute conspired to operate the Apprentice Program in a racially-exclusive fashion. Specifically, they conspired, and each of them acted in furtherance of the conspiracy as described below, to limit student participation to Blacks, Hispanics, American Indians, Alaskan Natives, Pacific Islanders, and Asians.

17. Sometime early in 1995, while a student at Roy Miller High School, plaintiff received a flier announcing the Apprentice Program for 1995. The flier stated that "applications will be accepted from minority students who are enrolled in high school during the 1994-95 academic year. . . . Minority students are those who identify themselves as being Black, Hispanic, American Indian, Alaskan Native, or Pacific Islander/Asian." The flier announced that applications were available from plaintiff's high school. A copy of the flier is attached hereto as Exhibit A.

18. Plaintiff obtained an application for the Apprentice Program and inquired at her school as to whether she was eligible. On April 13, 1995, defendant Edward Funkhouser, the director of the Apprentice Program, informed an employee of the Roy Miller High School career center that plaintiff could not qualify for the Apprentice Program because of her race.

19. Plaintiff was told that she could use her application to apply to the LabStart program, a program with similar goals and objectives but which had far fewer openings and was far more difficult to be accepted

into. Plaintiff applied for LabStart, but her application was rejected.

20. Plaintiff had all the necessary qualifications, with the exception of her race, to be selected for the Apprentice Program. She would have been selected had defendants not employed racially exclusionary criteria for selection.

21. Prior to the summer of 1996, plaintiff was apprised that the Apprentice Program maintained its racially-discriminatory policies. Although plaintiff wanted to participate in the Apprentice Program and was qualified in every way but her race, she did not apply in 1996 because any such application would have been futile.

22. The state defendants do not have any compelling reason to exclude on the basis of race in the admission of applicants to state-sponsored summer programs for high school students.

23. Notwithstanding the regulations that HHS and USDA have promulgated pursuant to Title VI banning racial discrimination, they each require that programs funded through NIH-MHSSRAP and USDA-MHSS, like the Apprentice Program, exclude whites. Neither the NIH, nor the HHS, nor the USDA has a compelling reason for promoting racial and ethnic segregation.

24. The USDA, NIH, and HHS continue to fund and support racially-discriminatory programs such as the Apprentice Program and, if not enjoined, will continue to do so.

25. A&M continues to offer the Apprentice Program, continues to exclude, and if not enjoined, will continue to exclude, whites from the Apprentice Program based solely on their race.

26. As a result of A&M's discriminatory refusal to admit plaintiff to the Apprentice Program, plaintiff has suffered damages, including lost income, diminished educational opportunities and attainment, and emotional distress.

#### First Claim (for Injunctive Relief)

27. Plaintiff repeats and realleges each of the allegations in paragraphs 1-26 as if fully set forth herein.

28. Defendants' actions in promoting and effecting race discrimination violate the Due Process Clause of the Fifth Amendment, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 2000d.

29. The HHS and USDA defendants should be enjoined from (1) inducing the recipients of USDA and NIH funds to engage in race discrimination; and (2) supporting racially-discriminatory programs with USDA and NIH funds.

30. The A&M defendants and the Institute should be enjoined from operating a summer program under color of state authority which excludes individuals on the basis of their race.

#### Second Claim (Against Howard Hughes Medical Institute)

31. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-30 as if fully set forth herein.

32. The Institute has conspired with the A&M defendants to operate the racially-discriminatory Apprentice Program under color of state law.

33. Plaintiff has suffered emotional distress and other injuries as a consequence of defendants' unlawful

actions.

34. Accordingly, plaintiff is entitled to an award of damages in an amount to be determined at trial.

Third Claim (Against the Individual A&M Defendants)

35. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-34 as if fully set forth herein.

36. Defendants Funkhouser, Patterson, Wild, Thomas, Ewing, and Foxworth are sued in this claim in their individual capacities.

37. Defendants Funkhouser, Patterson, Wild, Thomas, Ewing, and Foxworth violated clearly established Constitutional rights.

38. Accordingly, plaintiff is entitled to an award of damages in an amount to be determined at trial.

Fourth Claim (Against A&M and the Howard Hughes Medical Institute)

39. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-38 as if fully set forth herein.

40. A&M and the Institute receive federal funds for the operation of the Apprentice Program.

41. The racially exclusionary policy of the Apprentice Program violated (and continues to violate) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and the regulations promulgated pursuant to Title VI by the USDA (7 CFR 15) and HHS (45 CFR 80).

42. Accordingly, plaintiff is entitled to an award of damages in an amount to be determined at trial.

WHEREFORE, plaintiff demands the following relief:

A. An injunction precluding the HHS and USDA defendants from supporting programs which treat people differently on the basis of race;

B. An injunction precluding the A&M defendants and the Howard Hughes Medical Institute from treating people differently on the basis of race in the Apprentice Program;

C. Damages in an amount to be determined at trial;

D. Attorneys' fees, costs, and expenses pursuant to 42 U.S.C. §§ 1988, the Equal Access to Justice Act, and any other applicable authority; E. Such other relief as is just and appropriate.