United States Senate

WASHINGTON, DC 20510

February 18, 2026

The Honorable Linda McMahon
Secretary
United States Department of Education
400 Maryland Ave., SW
Washington, D.C. 20202

Dear Secretary McMahon:

We write to express our strong opposition to the Administration's decision to unilaterally halt federal funding for Minority-Serving Institutions (MSIs) based on a unilateral determination by the Department of Justice (DOJ) that these programs are unconstitutional. These longstanding programs have been authorized and funded by Congress for decades, and the Administration's baseless decision to deem these programs unconstitutional needlessly disrupts the fiscal stability of thousands of colleges and universities that educate millions of students of all ethnicities and backgrounds.[1]

Congress first established MSI programs on a bipartisan basis in the 1986 reauthorization of the Higher Education Act and expanded them in subsequent reauthorizations. MSIs have received bipartisan support over the course of six administrations presided over by presidents of both parties. That was true during President Trump's first term, when he signed the FUTURE Act into law, to secure permanent funding for Historically Black Colleges and Universities (HBCUs), Tribally Controlled Colleges (TCCUS), and MSIs.[2]

More than 800 federally recognized MSIs currently serve over five million students, many of whom are first generation college students and come from low-income backgrounds.[3] These include Asian American and Native American Pacific Islander Serving Institutions (AANAPISIs), Alaska Native and Native Hawaiian Serving Institutions (ANNHSIs), Hispanic Serving Institutions (HSIs), Native American Serving Non-Tribal Institutions (NASNTIs), and Predominantly Black Institutions (PBIs). More than half of all MSI students qualify for Pell grants,[4] and HSIs enroll 37 percent of the nation's Pell recipients.[5] As directed by Congress in Section 312(b) of the Higher Education Act, institutions to be eligible for MSI funding, are evaluated on their current enrollment (e.g. among the students they enroll, 15 to 25 percent of existing students must be from a particular student population), have lower than average expenditures, and must enroll high percentages of students receiving Pell grants or need-based aid.

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[1] https://www.ed.gov/about/news/press-release/us-secretary-of-education-linda-mcmahon-statement-office-of-legal-counsels-opinion-constitutionality-of-race-based-higher-education-grant-programs
[2] https://www.congress.gov/116/statute/STATUTE-133/STATUTE-133-Pg1189.pdf
[3] https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ed.gov%2Fmedia%2Fdocument%2Fope-2025-eligibility-matrix-62325-110283.xlsx&wdOrigin=BROWSELINK
[4] https://cmsi.gse.rutgers.edu/content/brief-history-msis#:~:text=MSIs%20also%20serve%20a%20disproportionately%20large%20number,percent%20less%20than%20that%20of%20majority%20institutions.
[5] https://hacu.net/hispanic-serving-institutions-across-the-nation-total-615/

On September 10, 2025, grantees who were recipients of discretionary grant funds under six programs received a letter that the funds were being reprogrammed because the Department of Education (Department) believed that "racial quotas" were unconstitutional.[6] At the time, the Department recognized that while it had statutory authority to reprogram the discretionary funds, the mandatory funds provided to MSIs,[7] which have been required in statute since 2007, could not be reprogrammed and would continue to be dispersed. The Department then added that it would continue to consider the underlying legal issues associated with the mandatory funding mechanism in these programs.[8]

On December 2, 2025, the Department of Justice's Office of Legal Counsel (OLC) issued an opinion[9] analyzing the constitutionality of the Department of Education's MSI programs and determined that both the discretionary and mandatory grants for HSIs, ANNHSIs, ANNAPISIs, and NASNTIs, and the formula-based PBI programs, are unconstitutional. On December 19, the Department of Education stated that it was evaluating the full impact of the OLC opinion on the affected programs.[10]

While the Department of Justice's opinion cites to the Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023) ("SFFA"), that decision pertained specifically to the factors a college or university can consider when evaluating a student for admission. Those factors are unrelated to the determination of whether a school should be considered an MSI, and relying on that precedent—when there has been no specific court determination that MSIs are unconstitutional—is an inappropriate subversion of duly-enacted federal law. MSIs are not directed nor required to employ race-conscious admissions policies for their enrollment; they are evaluated based on the population of students they already serve at the time they are applying for funding.

Furthermore, the funding provided to eligible MSIs through Title III and V grants is provided to the institution, not to specific students. The benefits of the funds are directed towards all students that attend those colleges, regardless of race, ethnicity, or socio-economic status. Without these funds, under-resourced institutions would not be able to adequately support their students' success and the economic benefits for the local communities where these institutions are located would be lost.

Notably, the OLC opinion does not differentiate grants to Native American or Native Hawaiian and Alaska Native serving institutions from other MSI grantees. The opinion incorrectly lumps

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[6] https://www.ed.gov/about/news/press-release/us-department-of-education-ends-funding-racially-discriminatory-discretionary-grant-programs-minority-serving-institutions

[7] These grant programs include: Strengthening Alaska Native and Native Hawaiian-Serving Institutions (Title III Part F); Strengthening Predominantly Black Institutions (Title III Part F); Strengthening Asian American- and Native American Pacific Islander-Serving Institutions (Title III Part F); Strengthening Native American-Serving Nontribal Institutions (Title III Part F); and Developing HSI Science, Technology, Engineering, or Mathematics and Articulation Programs (Title III Part F).

[8] http://www.ed.gov/about/news/press-release/us-department-of-education-ends-funding-racially-discriminatory-discretionary-grant-programs-minority-serving-institutions

[9] https://www.justice.gov/olc/media/1421576/dl?inline

[10] https://www.ed.gov/about/news/press-release/us-secretary-of-education-linda-mcmahon-statement-office-of-legal-counsels-opinion-constitutionality-of-race-based-higher-education-grant-programs

these institutions with all MSIs, even as federal law has long recognized that these programs serve categories of students that are not racial but rather political classifications. Notably, 90 percent of Native students enroll in traditional public and private colleges, including NASNTIs and ANNHSIs,[11] and the federal government has a fundamental legal responsibility to Native students' education that is not based on race but on treaties, statutes, court decisions, and the trust responsibility. Further, last year the Department recognized this "unique political and legal relationship" when it took the position that American Indian, Alaska Native, and Native Hawaiian history is not classified as diversity, equity, and inclusion and pledged to "continue to deliver on all statutory grant programs that support American Indian, Alaska Native, and Native Hawaiian students."[12] NASNTIs and ANNHSIs are statutorily authorized to receive federal support from the Department to strengthen their capacity to serve American Indian, Alaska Native, and Native Hawaiian students.[13]

Furthermore, this action is inconsistent with the policies of this Administration. Nearly a half dozen agencies have clarified[14] that programs that serve American Indians, Alaska Natives, and Native Hawaiians do not constitute Diversity, Equity, and Inclusion (DEI) activities prohibited by President Trump's executive orders.[15] Grants supporting Native communities with which the federal government holds trust and treaty obligations do not impose racial quotas or restrict admissions based on race, but rather deliver on the federal trust responsibility to provide an education for American Indians, Alaska Natives, and Native Hawaiians because of their unique legal status and political relationship with the United States.[16]

This decision is yet another example of this Administration attempting to circumvent Congress and its obligations to follow the law. Unilaterally deciding that long-standing programs are unconstitutional, absent a ruling from the judiciary, sets a dangerous precedent and disrupts needed support that colleges and students rely on.

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[11] E-mail and telephone communications between staff of the S. Comm. on Indian Affs. and the Am. Indian Higher Educ. Consortium (May 2025) (on file with author).

[12] https://collegefund.org/wp-content/uploads/2025/05/Letter-from-Department-of-Education-to-NIEA.pdf

[13] *See* 20 U.S.C. § 1059c; 20 U.S.C. § 1059d; 20 U.S.C. § 1059f.

[14] Dept. of Interior, SO 3416—Ending DEI Programs and Gender Ideology Extremism (2025), https://www.doi.gov/document-library/secretary-order/so-3416-ending-dei-programs-and-gender-ideology-extremism; U.S. Dep't of Health & Hum. Servs., Off. of the Gen. Couns., *Advisory Opinion 25-01 on Application of DEI Executive Orders to the Department's Legal Obligations to Indian Tribes and Their Citizens* (Feb. 25, 2025); U.S. Dep't of Agric., Off. of the Sec'y, *Secretary's Memorandum 1078-010: Clarifying the Application of Certain Executive Orders to Federally Recognized Indian Tribes, American Indian Tribal Citizens and Alaska Natives, and the Native Hawaiian Community* (May 5, 2025); U.S. Dep't of Hous. & Urb. Dev., Off. of the Gen. Couns., *Application of DEI Executive Orders to the Department's Legal Obligations to Indian Tribes and Their Citizens* (2025); U.S. Small Bus. Admin., Off. of the Gen. Couns., *Application of DEI Executive Order to American Indians and Alaska Natives* (2025).

[15] Trump, Exec. Order No. 14151, "Ending DEI Programs and Gender Ideology Extremism," Jan. 20 2025, https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/

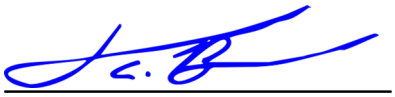
[16] *See, e.g.* 20 U.S.C. § 7513; 25 U.S.C. §§ 2000, 2501; Exec. Order No. 13592, 76 Fed. Reg. 76603 (2011); American Indian and Alaska Native Education, Exec. Order No. 13096, 63 Fed. Reg. 42681 (1998); *see also* 20 U.S.C. § 7701; Tribal Colleges and Universities, Exec. Order No. 13270, 67 Fed. Reg. 45288 (2002); American Indian and Alaska Native Education, Exec. Order No. 13336, 69 Fed. Reg. 25295 (2004); *see also* 1 Cohen's Handbook of Federal Indian Law § 23.01 (2024).

We urge you to allocate Title III and V discretionary and mandatory funds as Congress intended so that these institutions, which educate millions of working-class Americans, can continue to successfully serve every student they enroll and continue to be economic engines for the communities they serve across this nation. Thank you for your attention to this urgent matter.

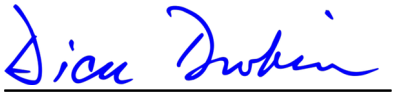
Sincerely,

Alex Padilla
United States Senator

Bernard Sanders
United States Senator
Ranking Member, Committee on Health, Education, Labor, and Pensions



Cory A. Booker
United States Senator



Richard J. Durbin
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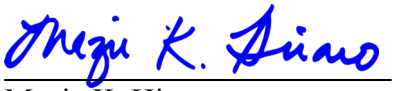
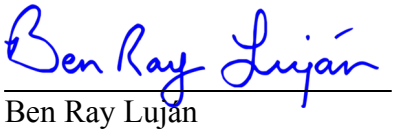
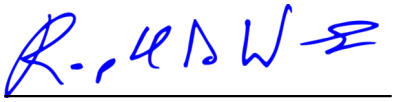


Mazie K. Hirono
United States Senator

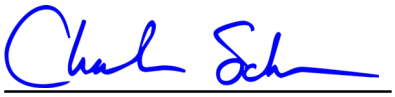


Ben Ray Luján
United States Senator

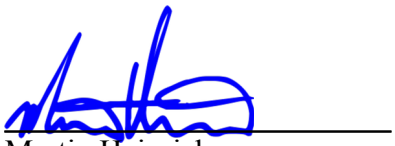


Raphael Warnock
United States Senator

Andy Kim
United States Senator

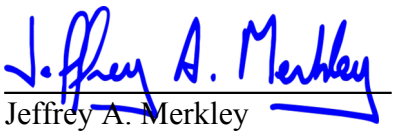


Charles E. Schumer
United States Senator



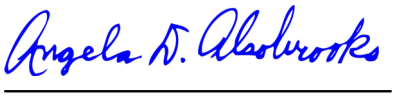
Martin Heinrich
United States Senator

Adam B. Schiff
United States Senator

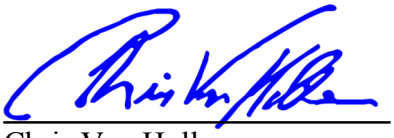


Jeffrey A. Merkley
United States Senator

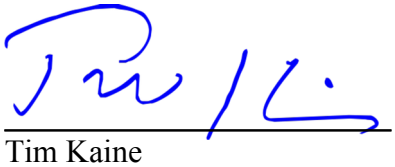
Jack Reed
United States Senator



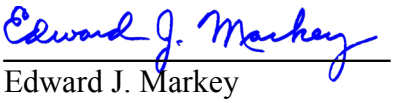
Angela D. Alsobrooks
United States Senator



Chris Van Hollen
United States Senator

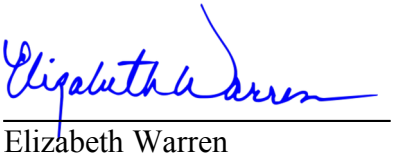


Tim Kaine
United States Senator

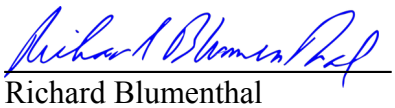


Edward J. Markey
United States Senator

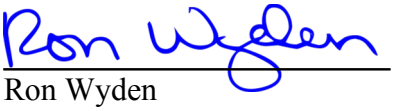
Mark R. Warner
United States Senator



Elizabeth Warren
United States Senator

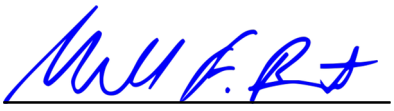


Richard Blumenthal
United States Senator

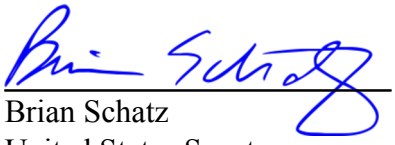


Ron Wyden
United States Senator

Kirsten Gillibrand
United States Senator



Michael F. Bennet
United States Senator



Brian Schatz
United States Senator

Jacky Rosen
U.S. Senator

Jon Ossoff
United States Senator

Tammy Baldwin
United States Senator

Mark Kelly
United States Senator

Patty Murray
United States Senator

Lisa Blunt Rochester
United States Senator