PACIFIC LEGAL FOUNDATION

March 19, 2024

Ms. Denise M. Verret
Chief Executive Officer & Zoo Director
Los Angeles Zoo
5333 Zoo Drive
Los Angeles, CA 90027

Dear Ms. Verret:

I am an attorney with Pacific Legal Foundation. PLF is a national public interest law firm that litigates civil rights cases that seek to vindicate the principle of equality under the law. PLF has won 17 cases at the U.S. Supreme Court with another case pending this year. *Sheetz v. Cnty. of El Dorado*, No. 22-1074 (U.S. argued Jan. 9, 2024). PLF also has extensive experience challenging the constitutionality of race- and sex-based discrimination in California and nationwide. *Coral Constr., Inc. v. City and Cnty. of San Francisco*, 235 P.3d 947, 964 (Cal. 2010); *Connerly v. State Pers. Bd.*, 112 Cal. Rptr. 2d 5, 42 (Cal. Ct. App. 2001); *see also Hurley v. Gast*, No. 422CV00176SMRSBJ, 2024 WL 124682, at *1 (S.D. Iowa Jan. 11, 2024) (declaring unconstitutional an Iowa law that mandated a gender quota on a state commission).

I was concerned to learn that the Los Angeles Zoo's paid internship program limits itself to "college students from systemically excluded identities in the zoo and conservation fields." Los Angeles Zoo, *Paid Internships*.[1] The Zoo's website explains that "this internship program is specifically available to applicants who identify as Black, Indigenous, people of color, people with varying abilities, and/or the LGBTQIA+ communities." *Id.* Thus, the Zoo overtly admits that it uses race to exclude college students for the internship.

This discriminatory program likely violates the U.S. Constitution's Equal Protection Clause, not to mention national and state civil rights laws. Basing eligibility for internships on an applicant's race is presumptively unconstitutional and is subject to strict scrutiny. The Zoo likely cannot justify such overt discrimination. *Students for Fair Admissions, Inc. v. Pres. and Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023). Under strict scrutiny, the Zoo must prove that selecting interns based on their race "further[s] compelling governmental interests." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 228

[1] https://lazoo.org/join-our-community/internships/

(1995). Furthermore, even if it could demonstrate that its discrimination furthered a compelling interest, the Zoo would have to show that the racial classification is "narrowly tailored" to furthering its compelling governmental interests. *Id*.

First, the Zoo cannot show that discriminating against prospective interns on the basis of race furthers a compelling governmental interest. In the context of racial discrimination, the only interest that is sufficiently compelling to satisfy strict scrutiny is "remediating specific, identified instances of past discrimination that violated the Constitution or a statute." *Students for Fair Admissions*, 600 U.S. at 207. The Zoo is unlikely to have specific evidence of any past racial discrimination against interns on its part that violated the Constitution or a statute. *Id*. The United States Supreme Court explained in *Students for Fair Admissions* that "diversity" goals are not a compelling reason to discriminate based on race. *Id*. at 214. And even before *Students for Fair Admissions*, remedying "societal discrimination" or "underrepresentation" in the zoo and conservation fields are not valid reasons to adopt a facially discriminatory program.

Relatedly, the Zoo cannot show that hiring interns based on race is necessary to remedy specific instances of racial discrimination that violated the Constitution or a statute. Indeed, the Zoo would have to show that classifying students based on race targets "a specific episode of past discrimination" in order for its racial preferences to survive strict scrutiny. *City of Richmond v. J.A. Croson Co*., 488 U.S. 469, 498 (1989). The Zoo cannot rely on a "generalized assertion that there has been past discrimination in an entire industry." *Id*. Additionally, the Zoo would need to show that the past discrimination was intentional and that the Zoo participated in that intentional discrimination. *Id*. at 492.

The Zoo's stated goal of helping "excluded identities in the zoo and conservation fields" meets none of these requirements. The Zoo's focus on the broader "zoo and conservation fields" shows that it is not trying to remedy a specific instance where it actively or passively participated in intentional discrimination against a specific racial group. Instead, it's simply making a generalized assertion that there has been past discrimination in the zoo and conservation industries more broadly. This does not satisfy the Zoo's obligation to show a compelling reason to discriminate based on race.

Second, even if the Zoo could show that hiring interns based on race was intended to remedy past intentional discrimination on its part, its racial hiring criteria is not narrowly tailored to fulfil that goal. Narrow tailoring requires the Zoo to prove to a court that its racial criteria for hiring interns "'fit[s]' [its] compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype." *Croson*, 488 U.S. at 493. For a policy to survive narrow-tailoring analysis, the government must show that it considered "race-neutral"

alternatives before discriminating based on race. *Id*. at 507. It must also show that the policy is not overbroad. *Id*. at 507–08.

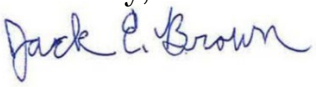
Here, the Zoo has not considered race-neutral ways to hire interns from communities allegedly underrepresented in the zoo and conservation fields. The Zoo's racial criteria is also overbroad because it treats all students in the categories of "Black, Indigenous, [and] people of color" as being eligible for the internship without any evidence that all racial groups falling in these categories experienced the Zoo's intentional discrimination. In fact, the Zoo's hiring criteria sweeps even more broadly than the racial quota the Supreme Court struck down in *Croson*. 488 U.S. at 478.

Given that the Zoo lacks a compelling reason to hire interns based on race and hiring interns based on race fails narrow tailoring, a court will hold that the Zoo's racial discrimination violates the Fourteenth Amendment's Equal Protection Clause.

Even in the highly unlikely event that the Zoo's racial preferences can survive strict scrutiny, its discrimination remains unconstitutional under Article I, Section 31 of the California Constitution, which prohibits California's State and local governments from "discriminat[ing] against, or grant[ing] preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment." Cal. Const. art. I, § 31. Because Section 31 "categorically prohibits discrimination and preferential treatment," even those rare discriminatory programs that can survive strict scrutiny are nonetheless prohibited. *Hi-Voltage Wire Works, Inc. v. City of San Jose*, 24 Cal. 4th 537, 567 (2000). As the Zoo is violating this clear constitutional command, a court reviewing a challenge to its discrimination will find that it is unconstitutional under Article I, Section 31.

Given the grave constitutional concerns at issue, please let me know by April 20, 2024, whether the Zoo intends on amending its hiring criteria for the Paid Internship Program so that race and/or ethnicity will no longer be factors for hiring in the future.

Sincerely,



Jack E. Brown*
Attorney
Pacific Legal Foundation
3100 Clarendon Blvd., Suite 1000
Arlington, VA 22201
(202) 888-6881

*Licensed in Virginia, Pennsylvania, and the District of Columbia

cc: Karen Bass
Mayor
City of Los Angeles
200 N. Spring St.
Los Angeles, CA 90012

Hydee Feldstein Soto
City Attorney
200 N. Spring St.
Los Angeles, CA 90012