



Reply to: Mark P. Fancher
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September 16, 2021

Richard K. Studley, Chair
Board of Trustees
Central Michigan University
Mt. Pleasant, MI 48859

Re: Track and Field Program

Dear Mr. Studley:

As you are most certainly aware, the decision to eliminate Central Michigan University's track and field program has generated considerable controversy and a movement to have the program reinstated. The ACLU of Michigan shares the concerns of the many people who believe the program's elimination has harmful racial implications, and to ameliorate the harm, the university should restore track and field as an opportunity for all students, and particularly students of color.

In our efforts to be helpful to the university we sent President Robert Davies a letter dated May 4, 2021 (enclosed). The letter is the product of considerable thought. It provides what we regard as a useful overview of historical and social factors that should be the subject of serious deliberation if the decision to eliminate the track and field program is to be considered in proper context. To our surprise and disappointment, the letter prompted neither a response nor an acknowledgment. In sending the letter, we presumed the good intentions of President Davies, and trusted that given the gravity of the issues he would be open to a constructive exchange of ideas. His silence and his failure to reinstate the track program leave us to conclude his position on this issue will not change, and we therefore turn to you and other members of the Board of Trustees (copied), to override President Davies' decision and restore track and field.

The university created a predicament for itself. The decision to eliminate track and field, a sport heavily populated by African American athletes, was itself sufficient to raise concerns and questions about the university's commitment to diversity and inclusion. But then, after eliminating track and field, the university decided to replace it with a golf program, a sport that is

among the whitest of sports.¹ How white is it? It is so white that only three percent of NCAA golfers are African American.² How white is it? It is so white, that even at historically Black universities, golf programs faced with a paucity of Black golfers must sometimes make specific efforts to place white golfers on their teams.³

African American golfers are rare because of both historical circumstance and design. Country clubs that have been the training grounds for elite golfers have historically been racially exclusive. Add to that the expense of the sport and the socio-economic circumstances of many African Americans, and the reasons for the whiteness of golf are quite evident. University administrators who made the decision to eliminate the track and field program must have been at least intuitively aware of these facts. Even if in administrators' own minds they present CMU as a welcoming institution, it is easy to understand how, against this backdrop, those who support reinstatement of the track program might instead regard the decision to replace track with golf as a deliberate punch in the gut. It might be viewed as the university's way of saying: "We hear the concerns about race, but those who are concerned don't matter. Not only do we not care about these people, but we want to show them that people of color are not wanted at CMU by making the problem worse and rubbing their faces in it."

The ACLU of Michigan is not legal counsel to any individual or group, but we also suggest that you consider several issues that may have legal implications under both Title VI of the Civil Rights Act and the Elliott Larsen Civil Rights Act, particularly given the decision to replace track with a white sport.

Title VI of the Civil Rights Act of 1964 prohibits discrimination by any program (including a university) that receives federal funding. 42 U.S.C. § 2000d. This law provides in part: "no person ... shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." *Id.* Federal regulations provide that, in addition to prohibiting purposeful or intentional race discrimination, Title VI prohibits recipients of federal funds from taking action that has an unjustified disparate impact based on race. 34 C.F.R. § 100.3(b)(2).

In addition, Section 402 of the Elliott-Larsen Civil Rights Act provides: "An educational institution shall not do any of the following: (a) Discriminate against an individual in the full utilization of or benefit from the institution, or the services, activities, or programs provided by the institution because of religion, race, color, national origin, or sex." Like Title VI, Elliott-Larsen prohibits disparate-impact discrimination in addition to disparate-treatment discrimination.

¹ *CMU to Add Men's Golf for 2022-23 Meeting NCAA's Minimum Sports Requirement*
<https://www.detroitnews.com/story/sports/golf/2021/08/05/central-michigan-add-mens-golf-2022-23-meeting-ncaas-minimum-sports-requirement/5502266001/>

² *Black Schools Hope NBA Star's Gift Sparks a Golf Resurgence*
<https://abcnews.go.com/Sports/wireStory/black-schools-hope-nba-stars-gift-sparks-golf-65233349>

³ *Even at HBCUS, Black Golfers Are in the Minority*
<https://theundefeated.com/features/even-at-hbcu-black-golfers-are-in-the-minority/>

Discrimination prohibited by these statutes is sometimes difficult to discern. But in this case, the following facts are ingredients for an argument that CMU is aware of the negative racial consequences of its decisions:

- (a) CMU's student body is reportedly 73% white, 10.9 % African American, and 4.89% Latino. Given the racial demographics of the broader population in the state, the university is arguably underserving communities of color.
- (b) According to reports, nationally, there are more African American male athletes in men's NCAA track than in all other minor sports combined.
- (c) Because African American male athletes participate in track more than any of the other minor sports, replacing CMU's track program with golf, a minor sports program that is demonstrably "white" speaks volumes about the university's racial insensitivity if not its discriminatory intent.

Even if a court were to conclude that factors set forth above fall short of proving discrimination, they nevertheless raise suspicions among those within and without the university community and undermine trust in the institution and its commitment to diversity and inclusion. All of this creates yet another disincentive to recruitment of students of color.

This issue should be addressed and resolved immediately through reinstatement of the track and field program. We are confident that this issue will otherwise continue to haunt the university well into the future, all the while exacerbating racial tension and promoting the idea that CMU is an institution that is at least indifferent (if not hostile) to the concerns and interests of communities of color.

The ACLU of Michigan welcomes the opportunity to expand on any of the issues and ideas presented in our letters, and we invite any questions or requests for additional information. Thank you for considering our thoughts on this matter.

Sincerely,

Mark P. Fancher

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Staff Attorney – Racial Justice Project

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