

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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PAMELA SWANIGAN,

Plaintiff,

-against-

THE UNIVERSITY OF CONNECTICUT

Defendant.

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COMPLAINT

Case No.

JUNE 3, 2014

PRELIMINARY STATEMENT

Plaintiff Pamela Swanigan brings this action for a declaratory judgment that the University of Connecticut's racially discriminatory policies in granting fellowship awards in its graduate degree programs violate the plaintiff's rights to equal protection of the laws and due process under the Fourteenth Amendment to the United States Constitution and her right to be free from racial discrimination in violation of 42 U.S.C. §§ 2000d et seq. and for a permanent injunction compelling the defendant to dismantle its discriminatory policies and to cease and desist from violations of those rights. Plaintiff further seeks compensatory and punitive damages in an amount to be proven at trial from these causes of action.

JURISDICTION AND VENUE

1. This is an action arising under the Constitution and laws of the United States. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §§ 1331 and 1343(3).
2. Venue in this Court is proper under 28 U.S.C. § 1391 and this Court has personal

jurisdiction over the defendant because its discriminatory actions took place in this district.

PARTIES

3. Plaintiff Pamela Swanigan has been enrolled continuously as a graduate student in the Ph.D. English program at the University of Connecticut (“the Program”) since the Fall semester of 2009.

4. The University of Connecticut (“UConn” or the “University”) is a public university in the State of Connecticut receiving federal funds to support its educational mission.

FACTS

5. UConn publically proclaims that “the university emphasizes diversity in the recruitment, retention and advancement of students, faculty and staff.”

6. Ms. Swanigan is a woman of mixed ethnic heritage. Ms. Swanigan’s father is a black American. Her mother is white.

7. Ms. Swanigan is a citizen of both the United States and of Canada. In 2008, Ms. Swanigan lived in the vicinity of Vancouver, British Columbia.

8. In the Fall of 2008, Ms. Swanigan applied to the Program for the 2009-2010 academic year.

9. On the required UConn application form to its graduate school, the University requested that applicants disclose their racial and ethnic heritages.

10. Ms. Swanigan identified her heritage by checking both the box next to “white” and the box next to “African American.”

11. Ms. Swanigan was widely acknowledged among the faculty and administrators of the University to be the candidate with the strongest academic background and prospects to

apply to the Program in her year. As UConn English professor and then-Director of Graduate Studies in the English Department Gregory Semenza later admitted to Ms. Swanigan in an email dated June 15, 2011, she “was a stronger candidate that year than anyone.”

12. Those responsible for determining admission to the Program, including the defendant’s employee Semenza, who had responsibility for determining which applicants to the Program would be nominated for and offered which scholarships and awards, worried that UConn would lose Ms. Swanigan to another university and wanted to convince Ms. Swanigan to enroll at UConn instead. As Semenza admitted that at the time of the award, he and others at UConn were “thinking we were quite likely to lose you to some place like Yale.”

13. UConn sent Ms. Swanigan two offer letters. In the first, dated March 5, 2009, the University offered her admission to the Program, tuition waiver, and a teaching assistantship worth about \$20,000 per year, and also told her she was being considered for the “Vice Provost's Award for Excellence” (the “Vice Provost’s Award”) which Semenza called a “merit-based fellowship.”

14. In the second letter, dated March 20, 2009 (the “3/20/09 Letter”), UConn offered Ms. Swanigan the “Vice Provost’s Award.” In this letter Semenza wrote:

The Graduate School considers the receipt of the Vice Provost Award for Excellence to be a highly significant honor and recognizes this by providing an annual reception held for recipients. Their honors and accomplishments will be publicized statewide when appropriate.

15. In explaining the financial inducements associated with the Vice Provost’s Award, Semenza wrote in the 3/20/09 Letter:

The aid consists of a very attractive package of \$6,750, which breaks down as follows: \$2,375 per semester and \$2,000 summer support. Along with the Teaching Assistantship (TA) (this will amount to an additional \$20,096.31 per year), bringing the cash total to \$26,846.31 per year contingent only on continued academic progress and availability of funds. We anticipate that neither of these

contingencies will be a problem for a student of your quality.

16. As the 3/20/09 Letter and other communications with UConn and its representatives demonstrates, UConn trades on an aura of academic merit and achievement that it consciously seeks to cultivate. Indeed, UConn declares in the promotional materials on its website that it ranks among the top 20 public universities in the nation and curates a long list of academic achievements and rankings.

17. Ms. Swanigan relied on the defendant's recognition of her academic excellence through the bestowal of the "Vice Provost's Award" in deciding to enroll in the Program. In fact, however, Ms. Swanigan never received the "Vice Provost's Award." No such award exists or existed at the time Ms. Swanigan applied to the Program.

18. At the end of Ms. Swanigan's second year in the Program, in the Spring of 2011, while the defendant still had her believing, contrary to fact, that she was receiving the "Vice Provost's Award," she was considering moving her residence out of the state and tried to determine whether she would still receive the financial component of the award if she finished her degree outside of Connecticut.

19. During that investigation, Ms. Swanigan was shocked and dismayed to discover that the only award she had been receiving since enrolling in UConn was the "Multicultural Scholars Program" ("MSP") award.

20. When Ms. Swanigan raised this issue with UConn, its employees continued to prevaricate for years about both the nature of the merit-based fellowship known as the "Outstanding Scholars Program" award ("OSP") and the MSP award and the method for selection. After constant entreaties from Ms. Swanigan about this fraud and the discrimination underlying it, UConn employee Semenza issued a confused rationalization that involved a "form

letter” and blamed the decision on then-acting UConn Graduate School Director Jim Henkel.

21. UConn defrauded Ms. Swanigan by luring her into the University with the promise that she would receive a (non-existent) prestigious merit-based award that recognized her academic excellence, whereas it secretly substituted a race-based award that subordinated any recognition of merit to competition within the much narrower pool of potential minority applicants.

22. No or virtually no OSP recipients have had American black or American Hispanic heritage.

23. All or almost all recipients of the MSP award have been of non-white heritage, as UConn considers that racial categorization. Because the MSP describes the ethnicity of the recipient rather than the merit of the recipient’s work, that award is inherently inferior to objectively merit-based awards.

24. The OSP award is a coveted, prestigious award based wholly on academic merit. It is substantially more prestigious, and therefore more valuable in academic terms, than the MSP award, which is given largely based on race.

25. Ms. Swanigan was nominated for and given the MSP award because of her race: specifically, because of her black American heritage. In the Spring of 2009, had Ms. Swanigan known that she had been offered the MSP award, she would have chosen not to enroll in the Program.

26. Because Ms. Swanigan was nominated for an MSP award designed for racial minority candidates, she was not permitted to compete for an OSP award open to non-minority applicants. Ms. Swanigan was not considered for the OSP award even though Professor Katherine Capshaw Smith, one of UConn’s employees, had recommended her for this award.

27. A white woman in the Program received an OSP award in Ms. Swanigan's incoming year, despite the fact that, academically, Ms. Swanigan was widely acknowledged as the strongest of any potential candidate for admission in her incoming year. Indeed, Semenza admitted to Ms. Swanigan on June 15, 2011 that:

You were the strongest candidate overall in the particular year you applied. Your GREs [Graduate Record Examination scores] were stellar, I think as high as those of anyone we've ever seen. Your experience as a writer was also exceptional. Your personal statement was strong and memorable, and you wished to work in children's lit[erature], and we were hoping to prioritize in that direction. In short, you rose to the top of the pile.

28. In effect, the defendant has created two separate and unequal systems for determining graduate school financial awards. Racial minority applicants are shunted into the MSP whose "multicultural" appellation is a euphemism meaning in practice that minorities cannot be considered for the more prestigious and competitive award. Meanwhile non-minorities are permitted to compete among the larger pool of applicants for the more prestigious OSP award. The defendant lured the unsuspecting Ms. Swanigan into the University with the promise of a merit-based award, but in fact excluded her from competing for the available, purely merit-based award because of her racial heritage.

29. When and because Ms. Swanigan discovered that she had been given an award based on her race, she suffered severe emotional distress.

30. The defendant has stigmatized Ms. Swanigan by fraudulently inducing her to accept an award based primarily on her racial heritage rather than her academic excellence.

31. The job market for PhD-holders in English, particularly plaintiff's specialty, Children's Literature, is extremely competitive. Whether searching for a teaching position or otherwise deploying her academic credentials, an applicant who lists a prestigious award on his

or her *curriculum vitae* stands a much greater chance of obtaining employment.

32. Because of the defendant's racial discrimination, Ms. Swanigan will be unable to list any prestigious award from her time at UConn. Instead, her credentials presented to any prospective employer will be immediately suspect because the MSP is known to be, as even a casual investigation would reveal, a race-based award.

33. UConn's representation to Ms. Swanigan that she would be receiving the "Vice Provost's Award," a "prestigious merit-based fellowship," was false and known by UConn employees to be false.

First Claim (for Injunctive/Declaratory Relief)

34. This claim incorporates each of the previous allegations set forth above.

35. The Fourteenth Amendment to the United States Constitution forbids any state from "deny[ing] an person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

36. In order to survive constitutional scrutiny, racial classifications must be narrowly tailored to further compelling government interests.

37. There can be no proper government interest in excluding a woman of mixed racial heritage from competing alongside white applicants for the most prestigious awards that UConn offers.

38. Title 42 U.S.C. §§ 2000d et seq. provides in relevant part that "No person in the United States 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."

39. UConn discriminated against Ms. Swanigan on the basis of her race in violation of the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. §§ 2000d et seq.

40. The defendant violated Ms. Swanigan's clear constitutional right to be considered for awards on the same basis as applicants of other races.

41. Plaintiff Pamela Swanigan is entitled to declaratory relief declaring that UConn's discrimination against her on the basis of her race violated the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. §§ 2000d et seq.

42. To remedy harm to future career prospects from defendant's discrimination, plaintiff Pamela Swanigan is entitled to an injunction requiring that, beginning as of the academic year 2009-2010, her MSP award be retroactively revoked and an OSP award retroactively be given to her.

Second Claim (for Damages)

43. This claim incorporates each of the previous allegations of the complaint.

44. Because of defendant's discrimination, Ms. Swanigan was denied UConn prestigious merit-based award and instead received a stigmatizing race-based award.

45. Because of defendant's discrimination, Ms. Swanigan suffered severe emotional distress.

46. Plaintiff Pamela Swanigan is entitled to compensatory and punitive damages at an amount to be determined at trial.

Demand For Judgment

WHEREFORE plaintiff demands judgment:

- A. Declaring that defendant's practice that restricted Ms. Swanigan to a race-based award and precluding her from competing for a more prestigious award because of her race violated the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §§ 2000d et seq.;
- B. Requiring that, as of the academic year 2009-2010, plaintiff's MSP award be retroactively revoked and an OSP award retroactively be made to plaintiff;
- C. Damages in an amount to be determined at trial;
- D. Attorneys' fees and costs pursuant to 28 U.S.C. § 1920, 42 U.S.C. § 1988, or any other applicable authority;
- E. Any other relief that is appropriate.

Respectfully submitted,

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