



September 2023

Thor Culverhouse, CEO
Submittable Holdings, Inc.

Dear Mr. Culverhouse:

The Foundation Against Intolerance & Racism is a nonpartisan, nonprofit organization dedicated to advancing civil rights and liberties and promoting a common culture based on fairness, understanding, and humanity. We have more than 80 chapters and tens of thousands of members nationwide. Our website, fairforall.org, can give you a fuller sense of our identity and activities.

We write in response to an incident report submitted through our anonymous reporting website, FAIRtransparency.org. The report was submitted by an individual who identifies him/herself as an author who has previously or would consider in the future submitting written works to various literary journals via your platform, Submittable.com. The report states, in part, that literary journals across the country are engaging in discriminatory practices in obtaining submissions from individuals seeking publication. [Linked here is the table of information](#) submitted to FAIR, containing the discriminatory practices alleged in the report. We have independently verified that what has been reported to FAIR is accurate. Among the 17 literary journals offering differential submission requirements are the following prominent journals: *The Massachusetts Review*, *Indiana Review*, *Hayden's Ferry*, *Ectone*, *Black Warrior Review*, and *The Common*.

As an organization committed to pro-human anti-racism, FAIR supports efforts to achieve greater fairness and diversity in all industries. We believe, however, that offering differential treatment in submission requirements based on skin color or ancestry violates Title VI of the Civil Rights Act. That statute provides:

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.

42 U.S.C. §§ 2000d, 2000d-4a(2); *see Regents of University of California v. Bakke*, 438 U.S. 265, 266 (1978) (“Title VI of the Civil Rights Act of 1964...provides...that no person shall on the ground of race or color be excluded from participating in any program receiving federal financial assistance.”). As recipients of federal funds, the above-listed journals are required to comply with Title VI.¹

¹ We recognize that some literary journals are privately endowed, but that does not obviate a journal’s required adherence to Title VI. Federal regulations clarify that a recipient of federal funds may not determine financial aid or other benefits “directly or through other arrangements” that “have the effect of subjecting individuals to discrimination because of their race, color, or national origin.” 34 C.F.R. § 100.3(b)(2) (emphasis added).

Because the above-listed journals have offered discriminatory submission guidelines for their publications, it is our opinion that they are each in violation of Title VI of the Civil Rights Act (some are also in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution, from which Title VI is derived), thereby infringing upon the rights of all of those who submit work to them. According to [Submittable Holdings' Customer Terms of Use](#), Submittable customers, including the literary journals listed above, are required to agree that they will not violate applicable laws or the rights of third parties. Specifically, Section 10.3 provides, in part:

Customer represents, warrants, and covenants to Submittable that (i) Customer Data provided by Customer will not infringe, misappropriate, or otherwise violate any rights of any third-party, or violate any applicable law or other personal or proprietary right.

By utilizing Submittable.com as the vehicle through which these literary journals offer discriminatory submission requirements to Submittable users, the journals are in clear violation of Submittable Holdings' Terms of Use.

We recognize that the underlying goal in offering preferential treatment to certain individuals is often to remediate the effects of past discrimination or to create environments that are more diverse and inclusive. Indeed, it is generous and thoughtful of journals to offer preferential submission requirements for those facing economic hardships or other needs. But such needs cannot be logically assigned to users based on immutable traits, and under Federal law, the journals may not offer such benefits only to certain individuals based on their skin color or ancestry.

If journals wish to offer reduced submission fees or otherwise accommodate those facing economic or other individual hardships, we urge them to do just that while not conflating such needs with race, skin color, or ancestry. We believe that such a gesture demonstrates a journal's commitment to non-discrimination and equal access. We recognize the important role that literary journals play in identifying and uplifting authors and artists from all backgrounds, and Submittable has become a critical tool for journals to carry out their missions. This utility is undermined when its access is contingent upon the immutable characteristics of those authors and artists.

Together with the undersigned individuals, we urge you to provide notice to the above-listed journals that they must remove their discriminatory practices because they are violative of users' rights and Submittable's Terms of Use. Of course, it is our hope that their submission pages will be revised to be compliant with Federal law and your Terms of Use. We hope you will take our suggestions to heart and hold your customers accountable for the rights of all Submittable users.

Very truly yours,

The undersigned signatories