

REFERENCE TITLE: preferential treatment; discrimination; prohibition

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HCR 2056

Introduced by

Representatives Montenegro: Biasiucci, Bliss, Carbone, Carter, Chaplik, Cook, Diaz, Dunn, Gillette, Grantham, Griffin, Heap, Hendrix, Jones, Kolodin, Livingston, Marshall, Martinez, McGarr, Nguyen, Parker B, Payne, Peña, Pingerelli, Smith, Toma, Willoughby, Wilmeth; Senators Bolick, Gowan, Shope

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE II, SECTION 36, CONSTITUTION OF ARIZONA; RELATING TO DISCRIMINATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona,
2 the Senate concurring:

3 1. Article II, section 36, Constitution of Arizona, is proposed to
4 be amended as follows if approved by the voters and on proclamation of the
5 Governor:

6 36. Preferential treatment or discrimination
7 prohibited; exceptions; applicability; definition

8 Section 36. A. This state shall not:

9 1. Grant preferential treatment to or discriminate
10 against any individual or group on the basis of race, sex,
11 color, ethnicity or national origin in the operation of public
12 employment, public education or public contracting.

13 2. COMPEL AN APPLICANT, EMPLOYEE OR CONTRACTOR TO
14 ENDORSE GIVING PREFERENTIAL TREATMENT TO OR DISCRIMINATING
15 AGAINST ANY INDIVIDUAL ON THE BASIS OF RACE OR ETHNICITY AS A
16 CONDITION OF ANY HIRING, PROMOTING OR CONTRACTING DECISION.

17 B. This section does not:

18 1. Prohibit bona fide qualifications based on sex that
19 are reasonably necessary to the normal operation of public
20 employment, public education or public contracting.

21 2. Prohibit action that must be taken to establish or
22 maintain eligibility for any federal program, if ineligibility
23 would result in a loss of federal monies to this state,
24 SUBJECT TO THE FOLLOWING:

25 (a) THIS STATE MAY NOT DISADVANTAGE OR TREAT
26 DIFFERENTLY ON THE BASIS OF RACE OR ETHNICITY ANY INDIVIDUAL
27 FROM AMONG ANY POOL OF APPLICANTS, STUDENTS, EMPLOYEES OR
28 CONTRACT RECIPIENTS WHEN MAKING A HIRING, CONTRACTING,
29 PROMOTING OR ADMITTING DECISION. ANY ACTION THAT WOULD
30 OTHERWISE BE PROHIBITED, INCLUDING IMPLEMENTING AN AFFIRMATIVE
31 ACTION POLICY, AND THAT IS TAKEN IN ACCORDANCE WITH FEDERAL
32 REQUIREMENTS PURSUANT TO THIS PARAGRAPH SHALL BE LIMITED TO
33 OUTREACH, ADVERTISING OR COMMUNICATION EFFORTS THAT DO NOT
34 MODIFY ANY FORMAL APPLICATION CRITERION OR EVALUATION.

35 (b) THIS STATE MAY NOT IMPLEMENT ANY DISCIPLINARY
36 POLICY OR DISCIPLINARY ACTION THAT TREATS AN INDIVIDUAL
37 STUDENT OR GROUP OF STUDENTS DIFFERENTLY ON THE BASIS OF RACE
38 OR ETHNICITY.

39 (c) ACCESS TO SERVICES, FACILITIES OR GROUNDS OF THIS
40 STATE MAY NOT BE CONDITIONED ON RACE OR ETHNICITY OF ANY
41 INDIVIDUAL OR GROUP OF INDIVIDUALS.

42 (d) TO UPHOLD THE CONSTITUTION OF THE UNITED STATES AS
43 THE SUPREME LAW OF THE LAND, THIS STATE DEEMS ANY REQUIREMENT
44 THAT THIS STATE PRACTICE RACIAL DISCRIMINATION OTHER THAN AS
45 PRESCRIBED IN SUBDIVISION (a) OF THIS PARAGRAPH TO BE

1 INCONSISTENT WITH THE FOURTEENTH AMENDMENT OF THE CONSTITUTION
2 OF THE UNITED STATES AND SUBJECT TO THE PROHIBITIONS
3 PROSCRIBED IN SECTION 3, SUBSECTION C OF THIS ARTICLE.

4 3. Invalidate any court order or consent decree that is
5 in force as of ~~the effective date of this section~~ DECEMBER 14,
6 2010.

7 4. PROHIBIT QUALIFICATIONS BASED ON TRIBAL MEMBERSHIP
8 AS PART OF A PROGRAM ESTABLISHED TO SERVE MEMBERS OF INDIAN
9 TRIBES.

10 C. The remedies available for a violation of this
11 section are the same, regardless of the injured party's race,
12 sex, color, ethnicity or national origin, as are otherwise
13 available for a violation of the existing antidiscrimination
14 laws of this state.

15 D. FOR THE PURPOSES OF SUBSECTION A, PARAGRAPH 2 OF
16 THIS SECTION, COMPELLING AN APPLICANT, EMPLOYEE OR CONTRACTOR
17 TO ENDORSE GIVING PREFERENTIAL TREATMENT OR DISCRIMINATING ON
18 THE BASIS OF RACE OR ETHNICITY INCLUDES:

19 1. REQUIRING OR SOLICITING A WRITTEN OR ORAL STATEMENT
20 IN SUPPORT OF ANY OF THE FOLLOWING:

21 (a) ANY THEORY OR PRACTICE THAT ADVOCATES FOR THE
22 DIFFERENTIAL TREATMENT OF ANY INDIVIDUAL OR GROUP OF
23 INDIVIDUALS BASED ON RACE OR ETHNICITY.

24 (b) ANY FORMULATION OF DIVERSITY, EQUITY, INCLUSION OR
25 INTERSECTIONALITY BEYOND UPHOLDING THE EQUAL PROTECTION OF THE
26 LAWS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE
27 CONSTITUTION OF THE UNITED STATES.

28 2. REQUIRING OR SOLICITING AN INDIVIDUAL TO CONFESS
29 RACE-BASED PRIVILEGE OR DISCUSS THE INDIVIDUAL'S RACE OR
30 ETHNICITY OR VIEWS ON OR EXPERIENCE WITH THE RACE OR ETHNICITY
31 OF OTHERS.

32 3. GIVING PREFERABLE CONSIDERATION TO AN INDIVIDUAL FOR
33 OPINIONS EXPRESSED OR ACTIONS TAKEN IN SUPPORT OF ANOTHER
34 INDIVIDUAL OR A GROUP OF INDIVIDUALS IN WHICH THE
35 CONSIDERATION IS BASED ON THE RACE OR ETHNICITY OF THOSE
36 INDIVIDUALS.

37 E. THIS SECTION DOES NOT PREVENT THIS STATE FROM
38 REQUIRING APPLICANTS, EMPLOYEES OR CONTRACTORS TO DO ANY OF
39 THE FOLLOWING:

40 1. DISCLOSE OR DISCUSS THE CONTENT OF THEIR SCHOLARLY
41 RESEARCH OR CREATIVE WORKS.

42 2. CERTIFY COMPLIANCE WITH STATE AND FEDERAL
43 ANTIDISCRIMINATION LAW.

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3. DISCUSS SERVICES, PEDAGOGICAL APPROACHES OR EXPERIENCES WITH STUDENTS OR INDIVIDUALS WITH MENTAL OR PHYSICAL DISABILITIES.

F. THIS SECTION DOES NOT PREVENT ANY APPLICANT OR EMPLOYEE FROM PROVIDING ANY INFORMATION DESCRIBED IN THIS SECTION ON THE APPLICANT'S OR EMPLOYEE'S OWN INITIATIVE.

~~D.~~ G. This section applies only to actions that are taken after ~~the effective date of this section~~ DECEMBER 14, 2010.

~~E.~~ H. This section is self-executing.

~~F.~~ I. For the purposes of this section, "state" includes this state, a city, town or county, a public university, including the university of Arizona, Arizona state university and northern Arizona university, a community college district, a school district, a special district or any other political subdivision in this state.

2. The Secretary of State shall submit this proposition to the voters at the next general election as provided by article XXI, Constitution of Arizona.