

Senate Engrossed

~~initiative; referendum; signatures; legislative districts..~~
(now: preferential treatment; discrimination; prohibited)

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SENATE CONCURRENT RESOLUTION 1024

A CONCURRENT RESOLUTION

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the Senate of the State of Arizona, the House of
2 Representatives 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; definition

8 Section 36. A. This state shall not grant preferential
9 treatment to or discriminate against any individual or group
10 on the basis of race, sex, color, ethnicity or national origin
11 in the operation of public employment, public education or
12 public contracting.

13 B. THIS STATE MAY NOT COMPEL AN APPLICANT, EMPLOYEE OR
14 CONTRACTOR TO ENDORSE GIVING PREFERENTIAL TREATMENT TO OR
15 DISCRIMINATING AGAINST ANY INDIVIDUAL ON THE BASIS OF RACE OR
16 ETHNICITY AS A CONDITION OF ANY HIRING, PROMOTION OR
17 CONTRACTING DECISION.

18 ~~B.~~ C. This section does not:

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

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

25 ~~B.~~ SUBJECT TO THE FOLLOWING:

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

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

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

44 (d) TO UPHOLD THE CONSTITUTION OF THE UNITED STATES AS
45 THE SUPREME LAW OF THE LAND, THIS STATE DEEMS ANY REQUIREMENT

1 THAT THIS STATE PRACTICE RACIAL DISCRIMINATION OTHER THAN AS
2 PRESCRIBED IN SUBDIVISION (a) OF THIS PARAGRAPH TO BE
3 INCONSISTENT WITH THE FOURTEENTH AMENDMENT OF THE CONSTITUTION
4 OF THE UNITED STATES AND SUBJECT TO THE PROHIBITIONS
5 ESTABLISHED UNDER SECTION 3, SUBSECTION C OF THIS ARTICLE.

6 3. Invalidate any court order or consent decree that is
7 in force as of ~~the effective date of this section~~ DECEMBER 14,
8 2010 OR PROHIBIT QUALIFICATIONS BASED ON TRIBAL MEMBERSHIP AS
9 PART OF A PROGRAM THAT IS ESTABLISHED TO SERVE MEMBERS OF
10 INDIAN TRIBES.

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

16 ~~D.~~ E. This section applies only to actions that are
17 taken after ~~the effective date of this section~~ DECEMBER 14,
18 2010.

19 ~~E.~~ F. This section is self-executing.

20 G. FOR THE PURPOSES OF SUBSECTION B OF THIS SECTION,
21 COMPELLING AN APPLICANT, EMPLOYEE OR CONTRACTOR TO ENDORSE
22 GIVING PREFERENTIAL TREATMENT OR DISCRIMINATING ON THE BASIS
23 OF RACE OR ETHNICITY INCLUDES:

24 1. REQUIRING OR SOLICITING A WRITTEN OR ORAL STATEMENT
25 IN SUPPORT OF:

26 (a) ANY THEORY OR PRACTICE THAT ADVOCATES FOR THE
27 DIFFERENTIAL TREATMENT OF ANY INDIVIDUAL OR GROUPS OF
28 INDIVIDUALS BASED ON RACE OR ETHNICITY.

29 (b) ANY FORMULATION OF DIVERSITY, EQUITY, INCLUSION OR
30 INTERSECTIONALITY, BEYOND UPHOLDING THE EQUAL PROTECTION OF
31 THE LAWS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE UNITED
32 STATES CONSTITUTION.

33 2. REQUIRING OR SOLICITING AN INDIVIDUAL TO CONFESS
34 RACE-BASED PRIVILEGE OR DISCUSS HIS OR HER RACE OR ETHNICITY
35 OR VIEWS ON OR EXPERIENCE WITH THE RACE OR ETHNICITY OF
36 OTHERS.

37 3. GIVING PREFERABLE CONSIDERATION TO AN INDIVIDUAL FOR
38 OPINIONS EXPRESSED OR ACTIONS TAKEN IN SUPPORT OF ANOTHER
39 INDIVIDUAL OR A GROUP OF INDIVIDUALS, IN WHICH THE
40 INSTITUTION'S CONSIDERATION IS BASED ON THE RACE OR ETHNICITY
41 OF THOSE OTHER INDIVIDUALS.

42 H. NOTHING IN THIS SECTION SHALL PREVENT THIS STATE
43 FROM REQUIRING APPLICANTS, EMPLOYEES OR CONTRACTORS:

44 1. TO DISCLOSE OR DISCUSS THE CONTENT OF THEIR
45 SCHOLARLY RESEARCH OR CREATIVE WORKS.

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2. TO CERTIFY COMPLIANCE WITH STATE AND FEDERAL ANTIDISCRIMINATION LAW.

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

I. NOTHING IN THIS SECTION SHALL PREVENT AN APPLICANT OR EMPLOYEE FROM PROVIDING, OF HIS OR HER OWN INITIATIVE, ANY INFORMATION DESCRIBED IN THIS SECTION.

~~F.~~ J. 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.