

REFERENCE TITLE: preferential treatment; discrimination; prohibited acts

State of Arizona
House of Representatives
Fifty-seventh Legislature
First Regular Session
2025

HCR 2042

Introduced by
Representatives Montenegro: Biasiucci, Bliss, Carbone, Carter N, Carter P,
Fink, Gillette, Griffin, Heap, Keshel, Kupper, Livingston, Peña,
Pingerelli, Powell, Rivero, Way, Willoughby; Senator Shamp

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE II, SECTION 36, CONSTITUTION OF ARIZONA; RELATING TO THE PROHIBITION OF PREFERENTIAL TREATMENT AND 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; definition

8 Section 36. A. This state shall not DO ANY OF THE
9 FOLLOWING:

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

14 2. COMPEL AN APPLICANT, EMPLOYEE, STUDENT OR CONTRACTOR
15 TO ENDORSE OR SUPPORT GIVING PREFERENTIAL TREATMENT TO OR
16 DISCRIMINATING AGAINST ANY INDIVIDUAL ON THE BASIS OF RACE OR
17 ETHNICITY AS A CONDITION OF ANY ADMISSION, GRADUATION, HIRING,
18 PROMOTION, CERTIFICATION OR CONTRACTING DECISION OR OTHER
19 EMPLOYMENT FUNCTION OR SCHOLARSHIP OPPORTUNITY.

20 3. SPEND PUBLIC MONIES TO OPERATE OR CONTRACT FOR ANY
21 OFFICE OR POSITION IN AN INSTITUTION OF PUBLIC EDUCATION THAT
22 IS RESPONSIBLE FOR PROMOTING PREFERENTIAL TREATMENT TOWARD OR
23 DISCRIMINATION AGAINST AN INDIVIDUAL OR GROUP ON THE BASIS OF
24 RACE OR ETHNICITY.

25 4. IMPLEMENT ANY DISCIPLINARY POLICY OR PRACTICE THAT
26 TREATS AN INDIVIDUAL STUDENT OR EMPLOYEE OR GROUP OF STUDENTS
27 OR EMPLOYEES DIFFERENTLY ON THE BASIS OF RACE OR ETHNICITY.

28 B. THE PROHIBITION IN SUBSECTION A, PARAGRAPH 2 OF THIS
29 SECTION REGARDING COMPELLING AN APPLICANT, EMPLOYEE, STUDENT
30 OR CONTRACTOR TO ENDORSE OR SUPPORT GIVING PREFERENTIAL
31 TREATMENT TO OR DISCRIMINATING AGAINST ANY INDIVIDUAL ON THE
32 BASIS OF RACE OR ETHNICITY INCLUDES ALL OF THE FOLLOWING:

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

35 (a) A THEORY OR PRACTICE THAT ADVOCATES FOR THE
36 DIFFERENTIAL TREATMENT OF ANY INDIVIDUAL OR GROUP OF
37 INDIVIDUALS ON THE BASIS OF RACE OR ETHNICITY.

38 (b) ANY FORMULATION OF RACE-BASED DIVERSITY, EQUITY AND
39 INCLUSION OR INTERSECTIONALITY IN CONTEMPORARY AMERICAN
40 SOCIETY BEYOND UPHOLDING THE EQUAL PROTECTION OF THE LAWS
41 GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF
42 THE UNITED STATES.

43 (c) THE BELIEF THAT A RACIALLY NEUTRAL OR COLORBLIND
44 LAW, POLICY OR INSTITUTION PERPETUATES RACIAL OPPRESSION OR

1 INJUSTICE OR RACE-BASED PRIVILEGE IN CONTEMPORARY AMERICAN
2 SOCIETY.

3 2. REQUIRING OR SOLICITING AN INDIVIDUAL TO CONFESS
4 RACE-BASED PRIVILEGE OR DISCUSS THE INDIVIDUAL'S RACE OR
5 ETHNICITY OR VIEWS ON OR EXPERIENCE WITH THE RACE OR ETHNICITY
6 OF OTHERS.

7 3. GIVING PREFERABLE CONSIDERATION TO AN INDIVIDUAL FOR
8 AN OPINION EXPRESSED OR AN ACT TAKEN IN SUPPORT OF ANOTHER
9 INDIVIDUAL OR A GROUP OF INDIVIDUALS IF THE CONSIDERATION IS
10 BASED ON THE RACE OR ETHNICITY OF THOSE INDIVIDUALS.

11 4. REQUIRING ENROLLMENT IN, OR COMPLETION OF, ANY
12 TRAINING OR COURSE THAT PROMOTES ANY OF THE TENETS PRESCRIBED
13 IN PARAGRAPHS 1, 2 AND 3 OF THIS SUBSECTION AND AS MAY BE
14 PRESCRIBED BY THE LEGISLATURE.

15 C. THE PROHIBITION IN SUBSECTION A, PARAGRAPH 3 OF THIS
16 SECTION REGARDING SPENDING PUBLIC MONIES TO OPERATE OR
17 CONTRACT FOR ANY OFFICE OR POSITION IN AN INSTITUTION OF
18 PUBLIC EDUCATION THAT IS RESPONSIBLE FOR PROMOTING
19 PREFERENTIAL TREATMENT TOWARD OR DISCRIMINATION AGAINST AN
20 INDIVIDUAL OR GROUP ON THE BASIS OF RACE OR ETHNICITY:

21 1. INCLUDES USING ANY APPROPRIATED MONIES OR ANY
22 REVENUE THAT IS DERIVED FROM ANY TAX, FEE, GRANT, TUITION,
23 ENDOWMENT OR DONATION OR ANY OTHER SOURCE THAT IS UNDER THE
24 CONTROL OF THE INSTITUTION OR THE INSTITUTION'S COMPONENT
25 UNITS TO PROMOTE OR PROMULGATE ANY OF THE FOLLOWING:

26 (a) AN EFFORT TO MANIPULATE OR OTHERWISE INFLUENCE THE
27 COMPOSITION OF THE FACULTY OR STUDENT BODY WITH REFERENCE TO
28 RACE, SEX OR ETHNICITY, APART FROM ENSURING COLORBLIND AND
29 SEX-NEUTRAL ADMISSIONS AND HIRING IN ACCORDANCE WITH STATE AND
30 FEDERAL ANTIDISCRIMINATION LAWS.

31 (b) THE DIFFERENTIAL TREATMENT OF OR THE PROVISION OF
32 SPECIAL BENEFITS TO INDIVIDUALS ON THE BASIS OF RACE OR
33 ETHNICITY.

34 (c) POLICIES OR PROCEDURES THAT ARE DESIGNED OR
35 IMPLEMENTED IN REFERENCE TO RACE OR ETHNICITY.

36 (d) TRAINING, PROGRAMMING OR ACTIVITIES DESIGNED OR
37 IMPLEMENTED WITH REFERENCE TO RACE, ETHNICITY,
38 INTERSECTIONALITY, GENDER IDENTITY OR SEXUAL ORIENTATION.

39 (e) RELATED PRACTICES OR CONCEPTS AS MAY BE PRESCRIBED
40 BY THE LEGISLATURE.

41 2. DOES NOT INCLUDE ANY OF THE FOLLOWING:

42 (a) ACADEMIC COURSE INSTRUCTION, RESEARCH OR CREATIVE
43 WORKS BY THE INSTITUTION'S STUDENTS, FACULTY OR OTHER RESEARCH
44 PERSONNEL AND THE DISSEMINATION OF THOSE ITEMS.

1 (b) ACTIVITIES OF REGISTERED STUDENT ORGANIZATIONS OR
2 ARRANGEMENTS FOR GUEST SPEAKERS AND PERFORMERS WITH SHORT-TERM
3 ENGAGEMENTS.

4 (c) MENTAL OR PHYSICAL HEALTH SERVICES THAT ARE
5 PROVIDED BY A LICENSED PROFESSIONAL.

6 ~~B.~~ D. This section does not:

7 1. Prohibit bona fide qualifications based on sex,
8 INCLUDING SEX-SPECIFIC SPACES OR DESIGNATIONS, that are
9 reasonably necessary to the normal operation of public
10 employment, public education or public contracting.

11 2. Prohibit action that must be taken to establish or
12 maintain eligibility for any federal program, ~~if~~ BOTH OF THE
13 FOLLOWING APPLY:

14 (a) Ineligibility would result in a loss of federal
15 monies to this state.

16 (b) THE ACTION THAT WOULD OTHERWISE BE PROHIBITED IS
17 LIMITED TO OUTREACH, ADVERTISING OR COMMUNICATION EFFORTS THAT
18 DO NOT MODIFY ANY APPLICATION CRITERION OR THE EVALUATION OF
19 ANY STUDENT, EMPLOYEE OR CANDIDATE.

20 3. Invalidate any court order or consent decree that is
21 in force as of ~~the effective date of this section~~ DECEMBER 14,
22 2010.

23 4. PROHIBIT A QUALIFICATION THAT IS BASED ON TRIBAL
24 MEMBERSHIP AS PART OF A PROGRAM ESTABLISHED TO SERVE MEMBERS
25 OF INDIAN TRIBES.

26 5. PROHIBIT DATA COLLECTION, ADVERTISING OR OUTREACH,
27 AS REQUIRED BY FEDERAL LAW.

28 6. PROHIBIT MENTAL OR PHYSICAL HEALTH SERVICES THAT ARE
29 PROVIDED BY A LICENSED PROFESSIONAL.

30 7. INCLUDE A TRAINING, PROGRAM OR ACTIVITY DEVELOPED BY
31 AN ATTORNEY AND APPROVED IN WRITING BY THE INSTITUTION'S
32 GENERAL COUNSEL AND GOVERNING BOARD FOR THE SOLE PURPOSE OF
33 ENSURING COMPLIANCE WITH ANY APPLICABLE COURT ORDER OR STATE
34 OR FEDERAL ANTIDISCRIMINATION LAW.

35 8. PROHIBIT IDENTIFYING AND DISCUSSING HISTORICAL
36 MOVEMENTS, IDEOLOGIES OR INSTANCES OF RACIAL HATRED OR
37 DISCRIMINATION, INCLUDING SLAVERY, INDIAN REMOVAL, THE
38 HOLOCAUST OR JAPANESE-AMERICAN INTERNMENT.

39 9. PREVENT THIS STATE FROM EITHER DOING OR REQUIRING AN
40 APPLICANT, EMPLOYEE OR CONTRACTOR TO DO ANY OF THE FOLLOWING:

41 (a) DISCLOSE OR DISCUSS THE CONTENT OF THE INDIVIDUAL'S
42 SCHOLARLY RESEARCH OR CREATIVE WORKS.

43 (b) CERTIFY COMPLIANCE WITH STATE AND FEDERAL
44 ANTIDISCRIMINATION LAWS.

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(c) IF EXPRESSLY REQUIRED BY FEDERAL LAW, CERTIFY THE EXISTENCE OF AN AFFIRMATIVE ACTION PLAN THAT DOES NOT INCLUDE PREFERENTIAL TREATMENT OF INDIVIDUALS ON THE BASIS OF RACE OR ETHNICITY.

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

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

~~G.~~ G. This section is self-executing.

~~F.~~ H. 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.