



ENDING STATE-BASED RACIAL DISCRIMINATION

THE PROBLEM: Racial discrimination in the states

A core principle of American constitutional and civil rights law is that the government treat individuals as individuals and not merely as representatives of their race, sex, color, ethnicity, or national origin. Government racial or ethnic classifications, for example, are only constitutionally or morally justified when they are narrowly tailored to serve a compelling government interest. Remedying specific government wrongs against identifiable individuals qualifies as compelling, but almost nothing else does.

Unfortunately, race and sex discrimination by government, especially through racially preferential government programs, are widespread and seem to be growing in number and scope every day.

THE SOLUTION: State legislatures can end state-based discrimination

Our model bill aims to correct the harms of sweeping preference programs and revive the constitutional ideal of equality before the law. Our model bill is based on prohibitions on racial discrimination and special preferences in nine states that began with the California Civil Rights Initiative, sometimes known as Prop 209. It prohibited race, ethnic, and sex preferences in public contracting, public employment, and public education in California. Arizona, Michigan, Nebraska, Oklahoma, and Washington have since adopted amendments to their state constitutions nearly identical to Prop 209. Florida, New Hampshire, and Idaho effected similar reforms by statute or gubernatorial order. We support the language of these reforms because it is simple, effective, and has withstood constitutional challenges.

STATE ANTI-DISCRIMINATION LAWS

STATE	YEAR EFFECTIVE	POPULAR NAME	HOW CREATED
Arizona	2010	Prop 107	Constitutional amendment*
California	1996	Prop 209	Constitutional amendment*
Florida	1999	Executive Order 99-281, One Florida Initiative	Executive Order
Idaho	2020	House Bill 440	State statute (legislatively enacted)
Michigan	2006	Proposal 2	Constitutional amendment*
Nebraska	2008	Measure 424	Constitutional amendment*
New Hampshire	2012	House Bill 0623 ¹	State statute (legislatively enacted 2011)
Oklahoma	2012	State Question 759	Constitutional amendment*
Washington	1998	Washington Initiative 200	Constitutional amendment*

* Approved through ballot initiative ¹ Excludes government contracting

Prop 209 also contains several limited exceptions, such as permitting preferences when necessary to be eligible for a federal grant, and some useful clarifications, like permitting the use of sex in public employment when sex is a bona fide occupational qualification. Our model bill includes these exceptions and clarifications because they help resolve common objections to prohibitions on preferences.

Anti-Discrimination Model Law

- (a) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.
- (b) This section shall apply only to action taken after the section's effective date.
- (c) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.
- (d) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.
- (e) Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the state.
- (f) For the purposes of this section, "state" shall include, but not necessarily be limited to, the state itself, any city, county, city and county, public university system, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the state.
- (g) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of then-existing State anti-discrimination law.
- (h) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.