



PACIFIC LEGAL
FOUNDATION

Call For Papers

THE LAW AND POLICY OF RACE AND SEX PREFERENCES IN GOVERNMENT CONTRACTING

Do race preferences give a hand up to individuals who need them and help create a more equal society, or do they violate the fundamental legal and moral principle that individuals should be treated as individuals and not on the basis of race or sex? Government contracting programs that offer preferences based on race or sex are sometimes defended on the grounds that they increase opportunity for historically disadvantaged groups. But they also may unfairly diminish opportunity for members of other groups, reinforce race and sex consciousness, and promote outdated race and sex stereotypes.

Much ink has been spilled on the conflict between different visions of opportunity with regard to preferential admissions to colleges and universities. But owning a business of one's own and being able to compete fairly for government contracts remains an equally attractive avenue of opportunity for many Americans. Yet legal and policy questions about race and sex preferences in contracting nonetheless seem to get less attention from scholars. This research roundtable seeks to close that gap and prompt additional research into the law and policy of race and sex preferences in government contracting.

Some research questions of particular interest:

1. Do current state or federal race or sex preferences in contracting pose separation of powers problems under doctrines like nondelegation or major questions? If yes, how?
2. Race preferences in contracting are lawful if narrowly tailored to meet a compelling interest. Sex preferences in contracting are legal if they further an important government interest and do so by means that are substantially related to that interest. What types of programs pass this constitutional scrutiny? What interests qualify as compelling and/or important? Are the relevant cases correctly decided? Why or why not?
3. Sometimes anecdotes are used as evidence of discrimination that can justify preferences in contracting. When, if ever, should anecdotal evidence constitute sufficient evidence of discrimination to permit race or sex preferences?

4. State or local governments may use race preferences in contracting if they can compile data showing a significant disparity between the numbers of minority contractors currently employed and the numbers of qualified, willing, and able minority contractors employed in that area. Are there legal or policy problems with the ways these disparity studies currently are conducted?
5. Some governments use percentage goals or targets. Critics charge that they are arbitrary and therefore unlawful. Are these criticisms founded?
6. What are the costs of race or sex preferences in contracting? A 2009 study found that after California enacted Prop 209, prices fell by 5% on state contracts (on which preferences were prohibited) versus federal contracts (where preferences were required). What would an up-to-date version of this study look like (or one for another state)?
7. What types of race- or sex-neutral alternatives to outright preferences in contracting are permitted under current precedent? Are programs that focus on ameliorating socioeconomic disadvantage better than those focused on racial disadvantage? Do race- or sex-neutral alternatives that are adopted for racial reasons ever themselves pose constitutional problems?
8. What is the original meaning of the Fourteenth Amendment with regard to the use of race preferences in contracting?
9. Do these programs actually narrow or eliminate disparities in business ownership? If they do not, does that mean these programs are ineffective at achieving their goals, or can they be defended on other grounds?
10. Do companies eventually grow to the point that they can move out of preferential programs? If not, is that a problem?
11. Is fraud a significant problem in administering these programs? If yes, what types of fraud are most common, and how can it be prevented?
12. Are these programs morally and philosophically defensible? Critics sometimes charge that racial favoritism undermines democracy and republican values; are these criticisms correct?
13. Have the *Students for Fair Admissions* opinions changed the legal landscape for government contracting, and if so, how? What does Justice Neil Gorsuch's concurrence about Title VI vs. equal protection clause liability suggest when contracting plaintiffs make statutory vs. constitutional claims?

Honorarium and Other Support

Please submit a brief research proposal that describes your thesis or research question(s) and intended methodology and how your research will contribute to the discussion of this topic.

Proposals should be submitted by May 15 to Alison Somin at asomin@pacificlegal.org. Early proposal submission is encouraged, as proposals will be reviewed on a rolling basis, and approvals will allow authors to begin work early. Submissions after May 15 may be accepted if space at the roundtable and budget permit.

Authors of accepted papers will receive a \$2,500 honorarium. Authors will benefit from robust feedback on their research.

Research Roundtable

Completed paper drafts are due 10 days before the date of the research roundtable but need not be in polished or publishable form. Authors will present their papers at the research roundtable that will be held in September at one of Pacific Legal Foundation's offices. Each paper author will be expected to formally comment on others' papers. We will cover the cost of hotel accommodation and reasonable travel expenses to the roundtable.

Contact Information

For questions regarding the call for papers, please contact Alison Somin at asomin@pacificlegal.org.

Timeline		Honorarium
MAY 15 PROPOSAL SUBMISSION DUE Early proposal submissions encouraged, as proposals will be reviewed on a rolling basis, and approvals will allow authors to begin work early. Submissions after May 15 may be accepted if space at the roundtable and budget permit.	10 DAYS BEFORE RESEARCH ROUNDTABLE Completed paper drafts are due 10 days before the date of the research roundtable but need not be in polished or publishable form.	Authors of accepted papers will receive a \$2500 honorarium.