



MODEL POLICY: EQUALITY IN PUBLIC APPOINTMENTS

THE PROBLEM: GENDER AND RACIAL DISCRIMINATION IN PUBLIC APPOINTMENTS

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

Unfortunately, governments at local and state levels often ignore this principle when choosing individuals to serve on boards and commissions. Appointing applicants based on characteristics like race or sex, instead of merit, is an egregious violation of the right to equal protection for all Americans, and it fails to serve the interests of the public. This type of discrimination is often referred to as gender or racial "balancing," and it ignores the unique skills and experiences that qualified candidates provide—reducing them to being judged by immutable characteristics.

THE SOLUTION: STATE LAW PROHIBITING RACE AND SEX DISCRIMINATION IN PUBLIC APPOINTMENTS

MODEL OF BEST PRACTICE

- (a) The state shall not discriminate against, or grant preferential treatment to, any individual on the basis of gender, race, sex, color, ethnicity, or national origin in the application, selection, and appointment of individuals to public boards, commissions, or other administrative bodies.
- (b) The existence of a statistical disparity between genders, races, or ethnicities in the percentage of a gender or racial/ethnic group's participation in the marketplace, without more, does not give rise to an inference of impermissible gender, race, or ethnicity-based discrimination.
- (c) This section shall apply only to actions taken after the section's effective date.
- (d) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex, which are reasonably necessary for the normal operation of public boards, commissions, or other administrative bodies.
- (e) Nothing in this section shall be interpreted as invalidating any court order or consent decree that is in force as of the effective date of this section.