



AJR 109/SJR 111 The Merit, Fairness, and Equality Act Prohibiting Government Discrimination in Public Employment, Education, and Contracting

Testimony of Senator Steve Nass
Senate Committee on Government Operations
March 5, 2024 • 330 Southwest, State Capitol

Thank you Chairman and committee members for allowing me to provide testimony in support of AJR 109/SJR 111. One of the foundational elements of the U.S. Constitution and our American justice system is equal protection under the law for all Americans, regardless of race, sex, color, ethnicity, or national origin. This constitutional amendment gives Wisconsin voters the opportunity to further embed these bedrock principles into our State Constitution.

On June 29, 2023, the U.S. Supreme Court ruled in *Students for Fair Admissions v. Harvard* that admissions policies that treat students differently based upon race are in violation of the Constitution's equal protection clause, and are not permissible. Chief Justice John Roberts, writing for the majority, concluded that a student "must be treated based on his or her experiences as an individual – not on the basis of race."

Yet a recent review of job postings from UW System institutions confirms that the UW continues their near obsessive use of race and "diversity" ideology as a prominent feature in hiring professors and other academic staff; not merit, qualifications, and achievement. Moreover, it was just discovered earlier this year that UW Madison Law School is mandating all law students take a controversial "re-orientation diversity training" program presented by radical instructor Debra Leigh, vice president for cultural fluency, equity, and inclusion at St. Cloud Technical & Community College.

Leigh has long been controversial for her views, including that those who claim to be colorblind are racist. Noted legal scholar Jonathan Turley, after reviewing the program, concluded "Students are given facts to be learned and the material attacks those who question these 'facts' as racist. Students are to adopt and recite [political viewpoints], not debate and challenge such viewpoints."

"In God We Trust"

11th Senate District
P.O. Box 7882 • Madison, WI 53707-7882 • (608) 266-2635
Toll Free: (800) 578-1457 • E-mail: Sen.Nass@legis.wi.gov

AJR 109/SJR 111, introduced for first consideration to the 2023-24 Legislature, restores Merit, Fairness, and Equality not only to hiring and admissions by the University of Wisconsin System, but to all governmental entities in the State of Wisconsin.

The proposed amendment prohibits all governmental entities in Wisconsin from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, public contracting, or public administration. A proposed constitutional amendment requires adoption by two successive legislatures, and ratification by the people of Wisconsin, before it can take effect.

Governmental entities is defined as the state, its political subdivisions including municipalities, the University of Wisconsin System, the Technical College System, any public college or university, and any public school district. It also includes any office, department, independent agency, board, commission, authority, institution, association, society, or other body in state or local government created or authorized to be created by the constitution or any law, including the legislature and the courts.

This fundamental principle is articulated in our founding documents. Our Declaration of Independence begins, *"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."*

It is further established in the Fourteenth Amendment to U.S. Constitution under the equal protection clause, which states, *"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor deny to any person within its jurisdiction the equal protection of the laws."*

The principle of a colorblind equality and merit-based decision making is again articulated by one of our greatest civil rights leaders, Dr. Martin Luther King, Jr., in his famous *I Have a Dream* speech, delivered on August 28, 1963 from the steps of Lincoln Memorial, during the March on Washington. *"I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character,"* Dr. King thundered, in what has become one of the most famous lines in American history. A call for equality and freedom, it became one of the defining moments of the civil rights movement and one of the most iconic speeches in American history.

Using immutable characteristics like race, sex, color, ethnicity, national origin, and the like to discriminate against, or grant preferential treatment to, any individual or group is

wrong, no matter who it targets or what the reason. It creates distrust and injustice, division and resentments that divide people, instead of uniting them. Past discrimination, however wrong, cannot be corrected with more discrimination. Old wounds cannot be healed by inflicting new ones.

This proposed amendment will ensure that we hire, promote, select, and admit people to our public universities, schools, and government agencies the same way we choose people for our Olympic team, military, and sports teams; through merit, character, ability, and hard work. Without regard to race, sex, color, ethnicity, or other immutable characteristics. Thank you for the opportunity to testify in support of this important amendment. I am happy to answer questions of the committee.



DAVE MURPHY

State Representative • 56th Assembly District

SENATE JOINT RESOLUTION 111/ ASSEMBLY JOINT RESOLUTION 109 TESTIMONY OF STATE REPRESENTATIVE DAVE MURPHY

Chairperson Stroebel and members of the Senate Committee on Government Operations, thank you for the opportunity to testify today on Senate Joint Resolution 111 and its companion, Assembly Joint Resolution 109.

This joint resolution is a constitutional amendment before the Legislature on first consideration. This amendment restores Merit, Fairness and Equality not only to hiring by the University of Wisconsin System, but to hiring by all governmental entities statewide.

The joint resolution specifically defines “governmental entities” as the State, its political subdivisions - including municipalities, the University of Wisconsin System, the Technical College System, any public college or university, any public school district, and any office, department, independent agency, board, commission, authority, institution, association, society, or other body in state or local government created or authorized to be created by the constitution or any law, including the legislature and the courts.

The amendment prohibits these governmental entities from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, public contracting, or public administration.

As I mentioned, this amendment restores Merit, Fairness and Equality to hiring.

First, it restores Merit to the hiring system by hiring people based on their skills and capabilities.

Second, it restores Fairness to the hiring system by ensuring that all applicants are treated equally. It assures no one is given improper preferential treatment and no one is improperly discriminated against.

Third, it restores Equality to the hiring system. Equality is different than “equity” in the buzzword “DEI.” “Equity” means everyone’s outcomes have to be the same, regardless of their skill or capability. “Equality,” on the other hand, means everyone – everyone – has an equal opportunity to be hired and advance in their job based on their particular set of skills and abilities.

Finally, I’d like mention that this constitutional amendment is based on a similar amendment passed in Michigan in 2006. That amendment has been upheld by the United State Supreme Court.

Nothing belongs in our State’s constitution more than an affirmative statement that all people should be treated equally. This amendment will assure everyone is treated in an equal manner in the State hiring process, and that everyone has an equal opportunity to be successful and help move Wisconsin Forward.

Thank you for your time and I would be happy to take any questions.



WISCONSIN INSTITUTE
FOR LAW & LIBERTY

March 6, 2024

Testimony in Support of AJR 109/SJR 111

Chairman Stroebel and members of the committee:

I am Dan Lennington, Deputy Counsel at the Wisconsin Institute for Law & Liberty. I direct WILL's Equality Under the Law Project, which advocates for a colorblind society through litigation and policy reforms.

Today I am pleased to support Assembly Joint Resolution 109 and Senate Joint Resolution 111. If approved by the Legislature and the voters, this constitutional amendment would explicitly prohibit any form of race discrimination in public employment, education, contracting, and administration. In practice, this amendment would ban government-sponsored affirmative action, racial quotas and preferences, and so-called Diversity, Equity, and Inclusion (DEI) policies that use racial discrimination.

The United States Constitution and the Wisconsin Constitution are built on a foundation of racial equality. No one should be granted a preference or denied a benefit based on race. All laws must be colorblind to ensure the American Dream for all individuals; otherwise, America will devolve into a racialized society with some racial groups punishing others based on perceived historical grievances. That's not the American Dream, but a nightmare of violence, poverty, and oppression.

Despite the clear and unequivocal mandate of legal equality in our constitutions, race-based programs, quotas, and preferences persist both at the state and local levels. These programs hurt Wisconsin individuals and businesses every day. Rooting out this racial discrimination will take a lot of work, but a constitutional amendment will go a long way to advance the cause of equality.

In August, we released a report—the [Equality for All Agenda](#)—that identified about twenty specific state laws and another twenty agency programs that discriminate based on race. These discriminatory laws and programs include grants, loans, scholarships, healthcare benefits, drug treatment, busing, housing, and employment opportunities.

Today I'd like to highlight a couple of these examples.

Every year, the State of Wisconsin contracts with thousands of businesses to supply goods and services, from roads and bridges to paper clips and staples. In the most recently reported fiscal year (2022), the State spent over \$3.4 billion on contractors. This entire procurement system is infected with discrimination. At least eleven state laws impose racial quotas or preferences on how this money is spent. According to these laws, a certain percentage of spending must be set aside for businesses owned by minorities, and businesses owned by minorities are also granted a 5% price preference, meaning they do not have to be the lowest bidder. According to the [Department of Administration](#), in fiscal year 2022, Wisconsin paid out over \$200 million to so-called “diverse suppliers” under this program. Several agencies actually spent over 25% of all their contracting dollars with “diverse suppliers.”

As another example, the Universities of Wisconsin continue to discriminate against students and employees based on race. Despite recent public promises to end discrimination, UW continues to offer race-based services, housing, awards, and scholarships, excluding many students, including whites, Asians, and students from the Middle East, because of their race. We recently [called on](#) UW to abandon these discriminatory programs.

While these programs are aimed at helping minorities, even those who broadly support race-based policies in Wisconsin are shocked to learn that in Wisconsin, the term “minority” does not actually include all racial minorities. Wisconsin law broadly excludes most Asians from minority-only programs, as well as individuals from north Africa and the Middle East. Some Latinos are also excluded from Wisconsin programs because they are not technically “Hispanics,” which is the term used by our laws and state agencies. In other words, even if you are in favor of racial preferences, you should be embarrassed by our state’s crude treatment of many minority groups. Racial line drawing is a messy business and demeans the dignity of everyone.

Government-sponsored race discrimination is not limited to state law and agency programs. At WILL, we hear frequently from individuals who have experienced race discrimination at the local level. The City of Milwaukee, for example, uses racial preferences in contracting and hiring, and many school districts embrace DEI policies that implement discipline, grading, and curriculum based on race. Race-based policymaking is pervasive throughout all levels of Wisconsin government.

The tide is clearly turning towards race neutrality and away from race-based DEI and affirmative action. Twenty-five states have now approved or introduced bills prohibiting DEI, and nine states explicitly banned affirmative action through constitutional amendment or statewide referendum. Public opinion strongly supports equality. A recent Marquette poll indicates that 75% of Americans support ending race-based affirmative action, including 53% of African Americans, 77% of Hispanic Americans, 73% of independents, and 58% of Democrats.

WILL strongly supports this proposed amendment to make explicit what we already know: all Americans deserve to be treated equally by their government.

Thank you for your time today, and I'd be happy to answer any questions.