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NOTICE OF CLAIM

January 13, 2021

City of Madison, Mayor Satya Rhodes-Conway,
and the Madison Common Council
c/o Madison City Clerk
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

To the City of Madison, Mayor Satya Rhodes-Conway, and the Madison Common Council:

The Wisconsin Institute for Law and Liberty, Inc. (WILL) represents seven Madison residents who are asserting claims against the City, its Mayor, and its Common Council for unconstitutional race discrimination. On behalf of our clients, who are identified at the end of this letter, you are hereby notified of their claims under Wis. Stat. § 893.80.

In September 2020, the City enacted an ordinance, Madison General Ordinance § 5.20, that requires four members of the Police Civilian Oversight Board (the “Board”) to belong to the following racial groups: “African American,” “Asian,” “Latinx,” and “Native American.” The Madison Common Council then added another racial quota requiring “at least 50% Black members” on the Board. *See* Resolution 20-00631 (adopting the “Final Report of the Alder Workgroup to Develop Logistics & Operational Details for Madison Police Department Independent Civilian Oversight.”)

The combined effect of the City’s ordinance and the Common Council’s official policy is that the eleven-member Board must satisfy the following racial quotas: six African American members, one Asian member, one member identifying as “Latinx,” and one Native American member. Individuals not in these racial groups (or who do not identify with these racial categories) are ineligible for nine of the eleven voting seats on Board.

Madison’s racial classifications—enshrined in City law and the official policy of the City—are unconstitutional, offensive, and repugnant to basic American values.

Article I, Section 1 of the Wisconsin Constitution provides: “All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness...” The Wisconsin Supreme Court interprets this provision as containing a guarantee of equal protection of the laws consistent with the Fourteenth Amendment to the United States Constitution. *Blake v. Jossart*, 2016 WI 57, ¶ 28, 370 Wis. 2d 1, 884 N.W.2d 484.

“At the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial [class].” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 730 (2007) (citation omitted).

“Purchased at the price of immeasurable human suffering, the equal protection principle reflects our Nation's understanding that [racial] classifications ultimately have a destructive impact on the individual and our society.” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 240 (1995) (Thomas, J.). “The Constitution abhors classifications based on race” because “every time the government places citizens on racial registers and makes race relevant to the provision of burdens or benefits, it demeans us all.” *Grutter v. Bollinger*, 539 U.S. 306, 353 (2003) (Thomas, J. concurring and dissenting in part).

Therefore, “all racial classifications imposed by government” are categorically prohibited unless the government proves that they are “narrowly tailored measures that further compelling governmental interests.” *Johnson v. California*, 543 U.S. 499, 505 (2005) (citation omitted).

Neither the City, the Mayor, nor the Common Council has identified any compelling governmental interests that would justify discriminating against Board applicants and members based on their race. Moreover, no Madison official has explained how this imposition of racial quotas is narrowly tailored or why the City's interests could not be served by a race-neutral policy.¹

We are particularly disappointed because Madison's new racial quotas violate the City's own ordinances, policy, and the longstanding judgment of the Dane County Circuit Court. Under Madison General Ordinance § 39.02, the City declares that its policy is to provide equal opportunities and access to “all persons from all segments of the Madison community without regard to their race.” Likewise, under the City of Madison Equitable Workforce Plan, 2016–2021, “[Q]uotas are expressly forbidden.” Moreover, the Dane County Circuit Court has cautioned that the argument that the Constitution allows *any* “racial discrimination” against “any race—white [or] black”

¹ In addition to violating the Wisconsin Constitution, the United States Constitution, and federal law, the ordinance and resolution also violate state law, including Chapter 111 of the Wisconsin Statutes. See Wis. Stat. § 111.321 (prohibiting discrimination based on “age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest record”).

“to be a dangerous concept fraught with inherent dangers for misuse and application.”
Krajco v. State Bur. Of Personnel, No. 148-037, 1997 WL 3770 (Dane Cty. 1977)
(Sachtjen, J.)

The harm caused by Madison’s ordinance and its official policy is ongoing. The City has spent, and continues to spend, taxpayer resources to create the Board and hold meetings. As taxpayers, claimants request that you withdraw the ordinance and resolution, that you disband the Board, and that you reconstitute the Board without regard to race. The following individuals are claimants:

DAVID J. BLASKA
[REDACTED]
Madison, WI 53711

DOROTHY M. BORCHARDT
[REDACTED]
Madison, WI 53704

BRADLEY D. DILLMAN
[REDACTED]
Madison, WI 53714

RICHARD A. FREIHOEFER
[REDACTED]
Madison, WI 53703

JAMES F. MAND
[REDACTED]
Madison WI 53704

PATRICK M. O’LOUGHLIN
[REDACTED]
Madison, WI 53711

NORMAN C. SANNES
[REDACTED]
Madison, WI 5371

Each of these individuals is a taxpayer and resident of the City of Madison. They are injured on an ongoing basis because of your unlawful and unconstitutional expenditure of tax dollars in the creation, implementation, and enforcement of Madison General Ordinance § 5.20(3)(a)2.a. and Resolution 20-00631. Claimant David J. Blaska, who is white, applied for a position on the Board and was rejected. At this time, damages, including attorney fees and costs, are undetermined and ongoing.

Any communication to the claimants regarding this matter should be directed to my attention. Service of this form does not waive any other claims or arguments, including the argument that Wis. Stat. § 893.80 is inapplicable to claims for injunctive and declaratory relief.

As a final matter, I am making a public-records request pursuant to Wis. Stat. § 19.35. Please provide me with electronic copies of any of the records which the City, the Mayor, and the Common Council contend are sufficient to establish that the racial quotas referenced above are narrowly tailored and that they further a compelling government interest.

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Daniel P. Lennington
Deputy Counsel