WISCONSIN INSTITUTE FOR LAW & LIBERTY

January 30, 2024

Testimony in Support of Assembly Joint Resolution 109

Chairman Tusler and Members of the Assembly Judiciary 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. 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 federal and state constitutions, race-based quotas and preferences persist. Wisconsin law contains dozens of race-based programs, quotas, and preferences. These state laws and policies impact Wisconsin citizens and business owners every day. Race discrimination is also present in our counties, cities, and school districts. Rooting out 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.

I'd like to highlight just one set of programs as an example of discrimination in our state laws: racial preferences in government contracting. 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 (2021), the State spent over $1.3 billion on contractors. This entire system is infected with race discrimination. At least eleven state laws impose racial quotas or preferences in how this $1.3 billion is spent. According to these laws, a certain percentage of spending must be set aside for businesses owned by minorities. This is race discrimination, pure and simple.

Even those who broadly support race-based policies may be surprised to learn how our state laws define the term "minority." In Wisconsin, "minority" does not actually mean "minority." For example, Wisconsin state law discriminates broadly against individuals from Asia (or whose ancestors are from Asia). Although Asia consists of 48 countries and dozens of separate ethnic groups, the Department of Administration only considers individuals from fourteen countries to be truly "Asian." According to DOA, for example, individuals from Indonesia, Malaysia, Myanmar, Nepal, and Mongolia are not "Asian." And while someone from Pakistan is considered "Asian," another person from just over the border in Afghanistan is not. Finally, DOA considers any individual from central Asia, western Asia, or the Middle East (for example, Iran, Iraq, Turkey, Gaza, and Yemen) as not "minority."

What about Latinos? State law only grants racial preferences to "Hispanics." "Hispanics" are narrowly defined under state law as those from a country "whose culture or origin is Spanish." This would exclude individuals who come from Brazil, Guyana, Suriname, or French Guiana, and would likely exclude individuals from English-speaking countries such as the Bahamas, Jamaica, and Belize.

If you are confused by Wisconsin's current race-based contracting preferences, it gets much worse. Several of Wisconsin's other race-based programs have different definitions of the term "minority." Two educational grants, for example, define "Asian" as only those students who come from one of three countries. And the Department of Health Services uses something called "Wallace's Line" to identify Asians. According to scholars, Wallace's Line originated in the 19th century as a tool of "colonial oppression and racial prejudice" because it treats humans like animals and plants, categorizing them based on physical features.

In short, Wisconsin's legal definitions of who is a "minority" simply don't make sense even if you are in favor of racial preferences. Racial line drawing is a

messy business. According to the Supreme Court, "it's a sordid thing, divvying us up by race." Racial classifications are pernicious and demean the dignity of all individuals.

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 ban affirmative action through constitutional amendment or statewide referendum. Public opinion strongly supports equality. A recent Gallup poll indicates that 68% of Americans support the Supreme Court's decision to end affirmative action, including 63% of Asian Americans, 52% of African Americans, and 68% of Hispanic Americans. The support is also bipartisan, with majorities of both major parties opposing race-based policies.

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.