



1819 NEWS

Allen Mendenhall: The racial quotas embedded in Alabama law

[Allen Mendenhall](#) | 07.13.26



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James Madison defends in Federalist 51 the proposition that government must be obliged to control itself. He did not anticipate the Alabama Legislature, which has spent decades quietly obliging itself to do the opposite.

Buried in the state's code, unnoticed by voters who assume that modern equal-protection doctrine settled the question of race-conscious government decades ago, are statutes assigning seats on state boards by racial identity.

Consider a partial inventory. The Alabama High School of Mathematics and Science requires that two of the governor's nine appointees be minorities. The Board of Occupational Therapy, the Board of Social Work Examiners, the Housing Finance Authority, and the Board for Registered Interior Designers

each reserve at least one seat by race. The Real Estate Commission maintains a permanently rotating seat for a black member. The Board of Chiropractic Examiners requires one at-large member to be African American.

Most remarkably, the Board of Podiatry instructs that vacancies be offered exclusively to black licensees until a black member sits on the board, a standing racial preference with no sunset and no pretense of subtlety.

Beyond these hard quotas lie dozens more boards – from the Alabama Securities Commission to the Board of Medical Licensure to the Alabama Board of Pharmacy – instructed by statute to require appointing authorities to consider racial, gender, geographic, urban, rural, and economic diversity. Softer language, but were it enforced according to its terms, it would require appointing authorities to sort applicants by racial percentage, apportioning seats as though Alabama’s approximately 65% white, approximately 26% black, approximately 6% Hispanic, and approximately 3% other population were shareholders in a corporation, each entitled to board representation proportional to its stock.

The peculiarity here is both constitutional and civic. Lawmakers recently enacted legislation expressing skepticism toward race-conscious governmental decision-making (namely, Ala. Code § 41-1-90 et seq., part of the 2024 law restricting so-called “divisive concepts” in state agencies and public education). That statute reflects a considered judgment, recently and deliberately made, that government should not sort people by race. The board quotas reflect an older judgment, made in different decades under different assumptions.

The two were never reconciled, less from any design than from the ordinary entropy of a code that accumulates faster than any legislature can revisit it; a licensing statute tucked into Title 34 rarely crosses the desk of whoever is drafting a statute in Title 41. The result is a code that condemns the *idea* of race consciousness in one title and quietly practices it in several dozen others, a contradiction less chosen than simply inherited.

The relevant constitutional doctrine is not obscure. Since *Richmond v. J. A. Croson Co.* (1989) (<https://supreme.justia.com/cases/federal/us/488/469/>), and *Adarand Constructors v. Peña* (1995) (<https://supreme.justia.com/cases/federal/us/515/200/>), any government racial classification – benign in intent or otherwise – triggers strict scrutiny under the 14th Amendment’s Equal Protection Clause. The government must show a compelling interest and narrow tailoring.

A permanent racial set-aside on a podiatry board, unmoored from any specific finding of past discrimination in podiatric licensure, faces substantial difficulty surviving strict scrutiny absent a specific evidentiary record demonstrating the necessity of the classification. It is a quota, dressed in the language of diversity, and such quotas have fared poorly in federal court.

Who may challenge such a statute? Standing does not require that plaintiffs have already lost a board seat because of race. Under *Northeastern Florida Chapter of the Associated General Contractors v. City of Jacksonville* (1993) (<https://supreme.justia.com/cases/federal/us/508/656/>), the injury in an equal protection challenge to a racial classification is the denial of an equal opportunity to compete, not the denial of the ultimate benefit. A qualified Alabamian who wishes to serve – a podiatrist, an occupational therapist, an aspiring member of the Real Estate Commission – and who can show the classification stands between him and an equal chance at appointment, need not wait to be formally passed over.

Such a person need not go looking very far for someone willing to help make that case; this writer would welcome the introduction.

None of this is a claim that Alabama’s boards should exclude any race; rather, the claim is the older and more important one: that they should stop counting race at all. This was the promise, imperfectly kept but never abandoned, of the 14th Amendment: that the law would know citizens, not colors. Alabama’s boards, product of an earlier jurisprudential era, are relics awaiting the correction that *Croson* and *Adarand* already supply, if only someone brings the case.

Two hundred and fifty years ago this summer, men in Philadelphia signed a document asserting that all men are created equal, a proposition Alabama has spent the intervening centuries first denying, then only partially redeeming, and now, in these quiet statutory corners, denying again by more genteel means. The anniversary invites reflection on how much of that promise remains unmet by habit rather than by any considered judgment that it should be.

Someone should ask a court to notice. The Constitution, patient as it is, is waiting.

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