

WI Institute for Law and Liberty: Final plan, adopted after WILL letter, removes racial classifications and eligibility categories

Posted on Monday, Mar 14, 2022

>> **WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)**

The News: The [final plan](#) for a federally-funded housing assistance program, administered and designed by Governor Tony Evers' administration, removed illegal racial classifications and eligibility categories identified in a January [letter](#) from attorneys at the Wisconsin Institute for Law & Liberty (WILL). WILL's letter warned Governor Evers that race classifications are illegal. Government policies that classify people by race are presumptively invalid under the 14th Amendment to the United States Constitution and Article 1, Section 1 of the Wisconsin Constitution.

The Quote: WILL Deputy Counsel, Dan Lennington, said "It is disappointing to see pernicious ideas like racial discrimination return in the form of government programs. It's a relief the Evers administration recognized the clear Constitutional and legal problems we identified in the design of this program and fixed them before any money was distributed. The program is now open to all Wisconsinites, regardless of race, and that's great news."

Background: WILL attorneys issued a [letter](#) to Governor Tony Evers, in January, urging changes to the implementation of a federal housing assistance program administered by the state of Wisconsin. The letter identified specific provisions in the "[Wisconsin Help for Homeowners](#)" program (WHH), a [\\$92.7 million](#) fund created by federal COVID-relief legislation, that included unconstitutional racial classifications that would provide housing grants with racial eligibility requirements.

The federal ARPA legislation, passed in March 2021, directs states to provide

housing grants to homeowners “having incomes equal to or less than 100 percent of the area median income [AMI] for their household size.” But states can increase the income eligibility pool to 150% AMI for “socially disadvantaged individuals.” “Socially disadvantaged individuals” is defined by the federal government to include only “Black Americans, Hispanic Americans, Native Americans, and Asian Americans and Pacific Islanders.”

In the initial [draft report](#) on WHH, Governor Evers’ administration chose to design the Wisconsin program with expanded eligibility for “socially disadvantaged” populations. Wisconsin DOA officials noted this means, “those whose householder is in any racial or ethnic group besides non-Hispanic/Latinx White.” Due to the racial classifications, only 6.6% of eligible households would qualify based on their race.

WILL’s letter warned Governor Evers that race classifications are illegal. Government policies that classify people by race are presumptively invalid under the 14th Amendment to the United States Constitution and Article 1, Section 1 of the Wisconsin Constitution. Courts may authorize the use of race when a government is attempting to remedy a past episode of intentional race discrimination that the government had a hand in, but such exceptions are exceedingly rare and the Wisconsin DOA has provided no evidence it is attempting to remedy any past episode of intentional race discrimination.

The [final plan](#) for the Wisconsin Help for Homeowners program, identified as Amendment #1 and dated January 2022, removed the racial classifications identified in WILL’s letter. In the final plan, the definition for ‘socially disadvantaged’ was adjusted to a definition adopted by the U.S. Treasury that removes explicit racial classifications. Additionally, the expanded eligibility up to 150% AMI, an option the federal government specifically attached to racial classifications, have been removed.

WILL’s letter to Governor Evers is part of the Equality Under the Law Project. More information about this project can be found at DefendEquality.org.

Read More:

- [WILL’s Letter to Governor Tony Evers](#), January 12, 2022
- [Homeowner Assistance Fund Final Plan](#), January, 2022
- [Homeowner Assistance Fund Draft Report](#), August 31, 2021