



2/06/2024

Rep. Dwayne Yunker  
900 Court St. NE, H-371  
Salem, OR 97301

Dear Representative Yunker,

I am responding to your request regarding House Bill 4041.

Pacific Legal Foundation is a nonprofit law firm established to protect constitutional rights. In our 50 years, we have won 17 cases at the United States Supreme Court, including five in the two most recent terms. One of our core practice areas is ensuring equality before the law.

A core principle of American constitutional and civil rights law is that the government treat individuals as individuals and not merely as representatives of their race, sex, color, ethnicity, or national origin. Government racial or ethnic classifications, for example, are only constitutionally or morally justified when they are narrowly tailored to serve a compelling government interest. Remedying specific government wrongs against identifiable individuals qualifies as compelling, but almost nothing else does. The Supreme Court's recent *Students for Fair Admissions v. Harvard* case emphasized this point.

HB 4041 includes race and ethnicity as a factor. There appears to be no identified constitutional or statutory violation that this bill purports to remedy. For these reasons, the use of race and ethnicity in House Bill 4041 poses serious constitutional concerns and, if the bill passes, is likely to be the subject of a court challenge.

Please let me know if I can provide any additional information.

Sincerely,

/s/ Daniel J. Dew  
Legal Policy Director