



February 10, 2021

City manager: Niroop Srivatsa
Email: nsrivatsa@lovelafayette.org

General Plan Advisory Committee
Via email: Generalplan@lovelafayette.org

Re: Weighted Lottery Use in the City of Lafayette’s General Plan Advisory Committee Selection

Dear City of Lafayette Manager and General Plan Advisory Committee:

The Center for American Liberty was recently contacted by a concerned resident of Lafayette regarding your recent implementation of a racially weighted lottery for the selection of members to Lafayette’s General Plan Advisory Committee (GPAC).

Claiming the need for equity, GPAC’s landing page states that “GPAC district and at-large members will be selected from weighted lotteries to augment applications from people of color by duplicating their entries in the lottery drawing.” However, the decision to weight applications in favor of only one class of persons —based solely on race— is far from equitable, running afoul of federal and state law. Favoring one class of persons, while excluding other classes based on race, violates the Fourteenth Amendment’s Equal Protection Clause and offends California’s Proposition 209, just recently affirmed by a statewide vote last year. For reasons below, we demand that you immediately conform all policies and procedures to comply with state and federal law.

I. The City of Lafayette’s Weighted Lottery Is Unconstitutional — The City of Lafayette May Not Burden One Class of Persons to Benefit Another Class.

All race-based classification, even by state and local governments, is subject to the strictest of scrutiny and must be narrowly tailored to achieve a compelling government interest. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995). It is “inherently suspect” to treat a person differently due to his or her race, with the government bearing the burden to prove that its reasonings behind such disparate treatment is “clearly identified and unquestionably legitimate.” *Fischer v. University of Texas at Austin*, 570 U.S. 297, 310 (2013). And outside of the educational context, it is doubtful that the city of Lafayette’s generalized goal of enhancing diversity is narrowly tailored to survive strict scrutiny — even generalized “societal discrimination alone” is not “sufficient to justify a racial classification. Rather, the Court has insisted upon some showing of prior discrimination by the governmental unit involved before allowing limited use of racial classification in order to remedy such discrimination.” (*Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal. 4th 537, citing *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986)).

GPAC's belief that minority persons would be disadvantaged by a traditional application process does not transform the weighted lottery into a legitimate and legal procedure. Using a weighted lottery under the guise of equity is, ironically, unequitable; a weighted lottery that adds duplicate applications only to minorities disadvantages non-minority persons. Businesses and governments may "never act to the detriment of a person solely because of that person's race" and discrimination is not "any different when the persons injured by a racially biased law are not members of a racial minority." *Fullilove v. Klutznick*, 448 U.S. 448, 525-26 (1980) (Stewart, J., dissenting).

II. The City of Lafayette's Weighted Lottery is Out-of-Sync with the Will of the People of California.

Just last year, the people of California voted to uphold Proposition 209, which added a non-discrimination amendment to the constitution of California. This amendment prohibits discrimination or the granting of preferential treatment "to, any individual or group on the basis of race, sex, color, ethnicity, or national origin." Cal. Const. Art. 1, § 31. The City of Lafayette, and its affiliated instrumentality like the GPAC, is also subject to this prohibition. ("For the purposes of this section, "State" shall include, but not necessarily be limited to, the State itself, any city, county, city and county, public university system, including the University of California, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the State." Cal. Const. Art. 1, § 31. (f)).

While GPAC may publicly pronounce a preferred equity statement — "We believe people of color, people from working class backgrounds, women and LGBTQ people must be centered in the General Plan process to form a vision for an equitable future"— it may not enact prohibited measures to force an outcome. While GPAC may "strongly encourage applications from people with these identities or who are members of other marginalized communities"— it may not weight applications to compel such an outcome.

For these reasons, the city of Lafayette's weighted lottery is illegal. Favoring one class of persons over another class is unconstitutionally discriminatory. Every applicant for the city of Lafayette's General Plan is entitled to an equal opportunity to be selected to serve his or her community. We demand you discontinue this plan immediately and implement a plan to select members using an equal opportunity baseline.

Regards,



Harmeet K. Dhillon, Esq.
Founder, Center for American Liberty

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cc:

Mayor and City Council
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