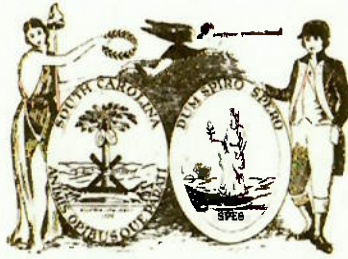


State of South Carolina
Executive Department

FILED

DEC 03 2025

Mark Hammond
SECRETARY OF STATE



Office of the Governor

EXECUTIVE ORDER NO. 2025-40

WHEREAS, racial discrimination is wrong, and “[d]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 208 (2023); and

WHEREAS, nowhere in South Carolina law should there be provisions that discriminate on the basis of race; and

WHEREAS, several sections of the South Carolina Code of Laws, as amended, call for unlawful racial discrimination in state procurement and contract decisions; and

WHEREAS, Chapter 35, Article 21 of Title 11 of the South Carolina Code, as amended, titled “Assistance to Minority Businesses,” makes race a central feature of procurement policy (“Title 11 Race-Based Procurement Policy”); and

WHEREAS, the Title 11 Race-Based Procurement Policy calls for selectively favoring “Minority Business Enterprises” (MBEs) in the procurement process; and

WHEREAS, Regulation 19-445.2160 creates a race-based distinction by defining a “Minority Business Enterprise” as “a business which has been certified as a socially and economically disadvantaged small business” and defines “social disadvantaged individuals” as people who have “been subject to racial or ethnic prejudice or cultural bias because of their identification as members of a certain group without regard to their individual qualities.” S.C. Code Ann. Regs. 19-445.2160(A)(2), (6); and

WHEREAS, the law incentivizes racial discrimination by providing that “[f]irms with state contracts that subcontract with minority firms shall be eligible for an income tax credit equal to four percent of the payments to minority subcontractors for work pursuant to a state contract,” subject to certain limitations, S.C. Code Ann. § 11-35-5230(B); *see also id.* § 12-6-3350; and

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WHEREAS, the Title 11 Race-Based Procurement Policy requires “each agency director [to] develop a Minority Business Enterprise (MBE) Utilization Plan,” which must include, among other things, “a policy statement expressing a commitment by the governmental body to use MBEs in all aspects of procurement” and a “goal[]” of spending “ten percent of [that] governmental body’s total dollar amount of funds expended” on minority businesses. *Id.* § 11-35-5240(1); and

WHEREAS, an agency’s MBE Utilization Plan must be submitted annually to the Division of Small and Minority Business Contracting and Certification, and an agency must submit quarterly progress reports to the Division. *Id.* § 11-35-5240(1); *see also id.* § 11-35-5270 (revised by 2014 S.C. Acts No. 121 to transfer responsibility from the Small and Minority Business Assistance Office to the Division); and

WHEREAS, the Title 11 Race-Based Procurement Policy requires an annual report to the Governor “concerning the number and dollar value of contracts awarded for each governmental body to a firm certified as a minority firm pursuant to Section 11-35-5230 during the preceding fiscal year.” *Id.* § 11-35-5260; and

WHEREAS, at least one other provision of South Carolina law poses similar problems of racial discrimination in contracting. Section 12-28-2930 of the South Carolina Code of Laws, as amended, requires the South Carolina Department of Transportation to “ensure that not less than five percent” of state source highway funds be “expended through direct contracts with certain estimated values . . . with small business concerns owned and controlled by socially and economically disadvantaged ethnic minorities (MBEs)” (“Title 12 Race-Based Procurement Policy”); and

WHEREAS, the “core purpose” of the Fourteenth Amendment’s Equal Protection Clause is “doing away with all governmentally imposed discrimination based on race” “[b]ecause racial discrimination is invidious in all contexts,” *Students for Fair Admissions*, 600 U.S. at 206, 214 (internal quotation marks and alterations omitted); and

WHEREAS, both the Title 11 Race-Based Procurement Policy and the Title 12 Race-Based Procurement Policy represent governmentally imposed discrimination based on race by favoring some races at the expense of others; and

WHEREAS, these policies rest on the false assumption that the solution to perceived historical wrongs is to racially discriminate against individuals in the present; and

WHEREAS, “[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race,” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007); and

WHEREAS, the Supreme Court of the United States has held that race-based programs “must comply with strict scrutiny, they may never use race as a stereotype or negative, and—at some point—they must end.” *Students for Fair Admissions*, 600 U.S. at 213; and

WHEREAS, the Title 11 Race-Based Procurement Policy and the Title 12 Race-Based Procurement Policy meet none of these constitutional requirements to permit racial discrimination. *See City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (striking down a 30% set aside in

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government contracting for MBEs); *Mid-Am. Milling Co., LLC v. U.S. Dep't of Transp.*, No. 3:23-CV-00072-GFVT, 2024 WL 4267183, at *1 (E.D. Ky. Sept. 23, 2024) (granting a preliminary injunction against the federal government's "Disadvantaged Enterprise Program" that "require[s] that ten percent of federal highway construction funds be paid to small businesses owned and controlled by 'socially and economically disadvantaged individuals'"); *Students for Fair Admissions*, 600 U.S. at 218–19 (holding that "zero-sum" policies, such as the State awarding contracts, necessarily treat race as a "negative"); *id.* at 213 (explaining that a race-based law lacks a logical end point where it has "no end . . . in sight"); and

WHEREAS, the United States Constitution "shall be the supreme Law of the Land," U.S. Const. art. VI, cl. 2, so when state law conflicts with any federal law, "the state law must yield." *Martin v. United States*, 605 U.S. 395, 409 (2025); and

WHEREAS, the undersigned has sworn to "preserve, protect, and defend" both the South Carolina Constitution and the United States Constitution, S.C. Const. art. VI, § 5, and is charged with "tak[ing] care that the laws be faithfully executed," *id.* art. IV, § 15; and

WHEREAS, the Title 11 Race-Based Procurement Policy and the Title 12 Race-Based Procurement Policy are incompatible with the Fourteenth Amendment's Equal Protection Clause; and

WHEREAS, these laws "also undermine our national unity, as they deny, discredit, and undermine the traditional American values of hard work, excellence, and individual achievement in favor of an unlawful, corrosive, and pernicious identity-based spoils system." President Donald J. Trump, Executive Order 14173, § 2, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (Jan. 21, 2025); and

WHEREAS, hardworking South Carolinians "who deserve a shot at the American Dream should not be stigmatized, demeaned, or shut out of opportunities because of their race." *Id.*; and

WHEREAS, the federal government, under the leadership of President Donald J. Trump, is similarly working to "terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements." *Id.*; and

WHEREAS, the undersigned has the constitutional and statutory authority to demand information from state agencies. *See* S.C. Const. art. IV, § 17; S.C. Code Ann. § 1-1-840; *id.* § 1-3-10.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Eliminating Unlawful Racial Discrimination in State Procurement and Contract Decisions

A. I hereby direct all departments, agencies, and other offices in the Executive Branch to comply with the Equal Protection Clause by not discriminating based on race in any procurement or contract matter.

B. I hereby direct, until any statutory change requires otherwise, that when departments, agencies, and other offices in the Executive Branch report to the Division of Small and Minority Business Contracting and Certification as required by Section 11-35-5260 of the South Carolina Code of Laws, as amended, the report shall certify that the department, agency, or other office is complying with the Equal Protection Clause and this Executive Order in all procurement and contract decisions.

C. I hereby direct all departments, agencies, and other offices in the Executive Branch to provide to the Office of the Governor by January 9, 2026, information about any regulation, policy, or practice that requires or permits the department, agency, or other office to consider race in any procurement or contract decision, regardless of whether that regulation, policy, or practice is connected to the Title 11 Race-Based Procurement Policy or the Title 12 Race-Based Procurement Policy.

D. No department, agency, or other office in the Executive Branch shall enter into any contract under either the Title 11 Race-Based Procurement Policy or the Title 12 Race-Based Procurement Policy until further order or instruction from the undersigned.

E. This Executive Order is prospective only. No department, agency, or other office in the Executive Branch shall breach any existing contract under this Executive Order.

Section 2. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

B. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. This Order shall be implemented consistent with and to the maximum extent provided by applicable law and shall be subject to the availability of appropriations. This Order shall not be interpreted, applied, implemented, or construed in a manner so as to impair, impede,

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or otherwise affect the authority granted by law to an executive agency or department, or the officials or head thereof, including the undersigned.

D. I hereby expressly authorize the Office of the Governor to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Order or to otherwise provide clarification regarding the same, through appropriate means, without the need for further Orders.



**GIVEN UNDER MY HAND AND THE
GREAT SEAL OF THE STATE OF
SOUTH CAROLINA, THIS 3rd DAY OF
DECEMBER, 2025.**

A handwritten signature in blue ink, reading "Henry Dargan McMaster", is written over a horizontal line.

HENRY DARGAN MCMASTER
Governor

ATTEST:

A handwritten signature in blue ink, reading "Mark Hammond", is written over a horizontal line.

MARK HAMMOND
Secretary of State