



January 21, 2026

Harmeet K. Dhillon
Assistant Attorney General
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Office of the Assistant Attorney General, Main
Washington, D.C. 20530

Re: Request for an Investigation into Hillsborough County's Diversity Advisory Council for Violating the Equal Protection Clause of the Fourteenth Amendment.

Dear Assistant Attorney General Dhillon:

Judicial Watch requests the Office of Civil Rights investigate Hillsborough County, Florida's Board of County Commissioners (BOCC) for its use of race, sexual preference, gender identity, and disability to appoint members to its Diversity Advisory Council. This practice violates the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.¹

The BOCC created the Diversity Advisory Council as a governmental body structured around explicit identity-based classifications.² The Council is comprised of two individuals from each of the following identity groups—African American, Caribbean, Far East Asian, LGBT, Hispanic/Latino, Indian Asian, Middle Eastern, Native American, Northern and Southern European, and People with Disabilities—a DEI “Noah’s Ark.”³ Members serve staggered two-year terms and are appointed by the BOCC from among Hillsborough County residents who are registered to vote and are from specific identity groups. The BOCC reviews applications and votes on them by identity group during regular meetings, filling vacancies in one group before moving to the next. The most recent application period closed on September 26, 2025, and the BOCC has yet to vote to fill the remaining vacant seats.

All racial classifications are subject to strict scrutiny.⁴ To survive strict scrutiny under the Fourteenth Amendment's equal protection clause, the BOCC must show that giving preferences

¹ This practice also violates Article I, section II of the Constitution of the State of Florida. Fla. Const. art. I, § 2.

² Hillsborough County Board of County Commissioners, Resolution No. R-12-113 (2012).

³ The Diversity Advisory Council also reserves two “At-Large” seats that do not require an applicant to make an identity group selection.

⁴ *Adarand Constructors v. Peña*, 515 U.S. 200, 227 (1995).

and privileges for Council members on the basis of race is “narrowly tailored” to serve a “compelling government interest.”

Adarand Constructors v. Peña established that the use of race as an eligibility requirement is presumptively unconstitutional.⁵ The U.S. Supreme Court only recognizes two instances where compelling interests allowed race-based government action.⁶ One instance is to remediate specific, identified instances of past discrimination that violate the U.S. Constitution or a statute.⁷ The other is to avoid imminent and serious risks to human safety in prisons, such as a race riot.⁸ The BOCC cannot show that its use of racial classifications to appoint members to its Diversity Advisory Council satisfies either of the U.S. Supreme Court’s two requirements for finding a compelling government interest. In fact, the BOCC’s stated purpose of the Council is to “facilitate communication between County government and its diverse populations”—a goal that can certainly be achieved without dividing members by race or excluding otherwise qualified applicants because of their race.⁹

The BOCC also cannot show that the Council’s eligibility requirements are narrowly tailored, or that it has considered race-neutral alternatives. Narrow tailoring requires courts to examine, among other things, whether a racial classification is “necessary”—in other words, whether race-neutral alternatives could adequately achieve the governmental interest.¹⁰ Although the Council includes two “At-Large” seats that do not require applicants to identify as a specific identity, the BOCC cannot demonstrate that race-based eligibility criteria are necessary. The availability of these race-neutral seats only demonstrates that participation can be structured without racial classifications.

Furthermore, the BOCC’s use of sex and gender identity as eligibility criteria is also unconstitutional. Such classifications trigger intermediate scrutiny under the equal protection clause, and they require the government to show that such a classification serves an important government objective and is substantially related to achieving that objective.¹¹ The justification must be “exceedingly persuasive.”¹² The BOCC cannot identify any important interest that is advanced by conditioning eligibility on sex or gender identity, nor can it show that the Council’s advisory responsibilities depend on or are furthered by such classifications. The eligibility criteria instead rely on broad assumptions that individuals’ viewpoints or contributions are defined by their sex or gender identity, which have been repeatedly rejected by the U.S. Supreme Court as impermissible stereotyping.¹³

⁵ *Id.*

⁶ *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.* (“SFFA”), 600 U.S. 181, 306 (2023).

⁷ *Id.*

⁸ *SFFA*, 600 U.S. at 306 (citing *Johnson v. California*, 543 U.S. 499, 512–13 (2005)).

⁹ Diversity Advisory Council (DAC), Hillsborough County, Florida (last visited Jan. 8, 2026), <https://hcfl.gov/councils/diversity-advisory-council>.

¹⁰ *SFFA*, 600 U.S. at 311.

¹¹ *United States v. Skrmetti*, 605 U.S. 495, 571 (2025); *Craig v. Boren*, 429 U.S. 190, 204 (1976).

¹² *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982) (quoting *Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981); *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 273 (1979)).

¹³ *Skrmetti*, 605 U.S. at 510; *United States v. Virginia (VMI)*, 518 U.S. 515, 550 (1996).

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Even under rational basis review, the BOCC's eligibility criteria fail. A classification must bear at least a rational relationship to a legitimate governmental purpose, yet the BOCC cannot show how excluding or privileging applicants based on sexual preference or physical disability rationally advances the Council's stated advisory function.¹⁴ Instead, the criteria sort applicants into preferred identity groups without any meaningful connection to the substance of the advice sought. Such arbitrary distinctions, untethered to any legitimate government objective, do not satisfy even the deferential rational basis standard and therefore violate the equal protection clause.¹⁵

Judicial Watch submitted public records requests to the BOCC in June and December 2025 to investigate the BOCC's explicit use of unconstitutional eligibility criteria that are repugnant to the U.S. Constitution's guarantee of equal protection. Judicial Watch now urges the Civil Rights Division to open a formal investigation into Hillsborough County's Board of County Commissioners and take appropriate remedial actions.

Sincerely,

JUDICIAL WATCH, INC.

A handwritten signature in blue ink, appearing to read "TJF".

Thomas J. Fitton
President

¹⁴ *Id.* Under Florida's Equal Protection Clause, physical disability is subject to strict scrutiny.

¹⁵ *Romer v. Evans*, 517 U.S. 620, 631–32 (1996).