



FOR IMMEDIATE RELEASE
January 5, 2024
#24-01

CONTACT: Tim Meads
timothy.meads@ag.tn.gov

TENNESSEE ATTORNEY GENERAL LEADS STATES IN CHALLENGING DEPARTMENT OF COMMERCE'S UNLAWFUL RACE-BASED 'BEST PRACTICES' GUIDANCE

NASHVILLE – On Friday, Tennessee Attorney General Jonathan Skrmetti, alongside the Attorneys General of Montana and Kansas, led a coalition of 19 states in submitting a public comment letter challenging the legality of the Department of Commerce's "Businesses Diversity Principles" proposal. The proposed "best practices" guidance allegedly seeks to increase "diversity, equity, inclusion, and accessibility" (DEIA) throughout corporate America by promoting illicit racial discrimination and fundamentally anti-American principles.

"The federal Department of Commerce needs to recognize it's not legal to treat people differently because of the color of their skin," Attorney General Skrmetti said in a statement. "We're warning the Department that its proposed 'Business Diversity Principles' guidance violates the law, promotes racial discrimination, and would lead our country backward."

Recently, White House Press Secretary Karine Jean-Pierre asserted that the Administration seeks to advance "equity" in every policy. Indeed, one of the first Executive Orders signed by the president outlined the Administration's "ambitious, whole-of-government approach to racial equity" and directed federal agencies to "continuously embed[] equity into all aspects of Federal decision-making."

The proposed guidance runs afoul of the law in three ways:

- *First*, the Commerce Department's proposed race-based employment policies violate the U.S. Constitution's Equal Protection Clause.
- *Second*, race-based employment decision-making violates Title VII and related civil-rights laws.
- *Third*, the discrimination that "cannot be done directly" under governing law also "cannot be done indirectly" through end-run means consciously aimed at satisfying racial targets.

The Commerce Department's Business Diversity Principles would push businesses to "strive to meet diversity targets in their long-term workforce plans" and assess DEIA performance using "demographic data across all levels and departments."

Put another way, the Administration wants to tell private businesses to hire certain individuals based on racial preferences. If they do not, according to the government, those businesses are not using "best practices." Such practices are immoral, illegal, and regressive.

However well-intentioned, race-based employment practices are still as illegal as invidious discrimination. As the Supreme Court reasoned, "[e]liminating racial discrimination means eliminating all of it." That should—and legally, must—be square one for any employment "best practices" the Commerce Department promulgates.

The following states hope to work with the Commerce Department to promote meaningful diversity of thought, experiences, and skills that comply with federal and state law. In the meantime, the following states will continue to oppose measures that perpetuate unlawful treatment of individuals on the basis of race:



Tennessee, Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, South Carolina, Texas, Virginia, and West Virginia.

The commenting letter can be read [here](#).

###