



July 21, 2026

Via Email and FedEx

Town of Plymouth
Town Manager Derek Brindisi and Members of the Select Board
26 Court Street
Plymouth, MA 02360
selectmen@plymouth-ma.gov

Re: Plymouth Historical Commission Seats

Dear Town Manager and Members of the Select Board:

We write on behalf of Pacific Legal Foundation and the Equal Protection Project, public-interest legal organizations dedicated to ensuring that government programs comply with the Constitution's guarantee of equal protection under the law.

The purpose of this letter is to address the Select Board's recent decision to reserve two seats on Plymouth's Historical Commission for members of the Herring Pond Wampanoag Tribe. We are writing to advise you that this ancestry-based preference is likely to be found unconstitutional by a court under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

The Board's action of reserving two seats on the Historical Commission for members of the Herring Pond Wampanoag Tribe excludes otherwise qualified citizens from public service based on ancestry. Outside the limited federal Indian-law context, classifications based on tribal membership operate as ancestry-based proxies for race and are subject to strict scrutiny.

The Supreme Court has held that state programs that allocate benefits or opportunities based on race are presumptively unconstitutional and permissible only in exceedingly narrow circumstances. In *Students for Fair Admissions, Inc. v. Harvard*, the Court reaffirmed that racial classifications are lawful only when necessary to remedy specific, identified instances of past discrimination by the government itself or to address imminent threats to human safety. The Board does not rest on either justification—simply seeking to increase representation of members of a particular ancestry group does not constitute a compelling governmental interest under the Equal Protection Clause.

During the December 16, 2025, Select Board meeting, Selectman Bill Keohan discussed approving the Town Manager's recommendations for members of the Historical Commission. He noted that Massachusetts law allows for the expansion of the Commission by two seats and proposed the committee be expanded to include two members of the Herring Pong Wampanoag Tribe¹.

At the December 30, 2025, Select Board meeting, the Board voted to advertise two additional seats on the Historical Commission with preference given to members of the Herring Pond Wampanoag Tribe.² The Board did not identify—and we are not aware of—any specific instances of discrimination against members of the Herring Pond Wampanoag Tribe that this set-aside is purporting to remedy.³

In January 2026, the Town of Plymouth, as well as the Select Board, advertised these two additional seats, noting that preference would be given to members of the Herring Pong Wampanoag Tribe. The Historical Commission's website explains that the "preference" is a permanent quota, as seats 6 and 7 are both identified as "Herring Pond Wampanoag Tribe" seats. *Id.*

Pacific Legal Foundation and the Equal Protection Project have extensive experience evaluating and litigating constitutional challenges to race-based government programs nationwide. Before determining whether further action is warranted here, we are providing the Town Manager and the Board with an opportunity to address these concerns directly.

Accordingly, we respectfully request that you inform us by **July 31, 2026**, whether the Board intends to eliminate tribal membership as an eligibility criterion to serve on the Historical Commission.

Sincerely,

William A. Jacobson
Equal Protection Project of the
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¹ This meeting is publicly available at this link:
<https://www.youtube.com/watch?v=tUFe6NnAZqc>.

² This meeting is publicly available at this link:
https://youtu.be/18pJY9AFHsU?si=KiFxxkqXeupXB_c9R.

³ See discussion of tribal membership requirement during December 16, 2025, meeting of the Select Board, which is publicly available at this link:
<https://www.youtube.com/watch?v=tUFe6NnAZqc>. A member proposed the tribal membership requirement to increase "representation of the native people."