

Amendment 46
Education, Employment, and Contracting Practices in Government

1 Amendment 46 proposes amending the Colorado Constitution to:

- 2 ♦ prohibit Colorado governments from discriminating against or granting
3 preferential treatment to any individual or group on the basis of race,
4 sex, color, ethnicity, or national origin in public employment, public
5 education, or public contracting;
- 6 ♦ make exceptions for federal programs, court orders or consent decrees,
7 and qualifications based on sex; and
- 8 ♦ provide the same remedies that are available for violations of Colorado
9 anti-discrimination law.

10 **Summary and Analysis**

11 Current law prohibits public and private employers and public educational
12 institutions from discriminating against anyone based on various characteristics,
13 including race, sex, color, and national origin. Governments may consider these
14 characteristics when choosing among qualified individuals and firms, but quotas or
15 systems that select candidates solely because of a characteristic are not allowed.
16 Amendment 46 addresses discrimination and preferential treatment in the areas of
17 public employment, public education, and public contracting.

18 ***Discrimination.*** Amendment 46 expands current Colorado law to prohibit
19 discrimination based on ethnicity in public employment. The measure also prohibits
20 discrimination in public education and public contracting based on race, sex, color,
21 ethnicity, or national origin.

22 ***Preferential treatment.*** Amendment 46 prohibits state and local governments,
23 including public colleges and universities, from granting preferential treatment to
24 individuals in the areas of public employment, public education, and public contracting
25 on the basis of race, sex, color, ethnicity, or national origin.

26 Preferential treatment generally refers to programs that target assistance to
27 individuals or businesses based on race, sex, or ethnicity. Currently, public colleges
28 and universities in Colorado offer recruitment, admissions, financial aid, and mentoring
29 programs in order to provide a particular race, ethnicity, or gender with better access
30 to higher education. Also, governments in Colorado have programs designed to assist
31 minorities and women with starting a new business, competing for public contracts,
32 and professional development.

33 ***Exceptions.*** Amendment 46 excludes the following from the prohibitions on
34 discrimination and preferential treatment.

- 1 ♦ *Activities required to receive federal funding.* For example, the
2 Colorado Department of Transportation provides assistance to women-
3 and minority-owned businesses to compete for federally funded
4 projects. The state cannot receive federal highway money without the
5 program.

- 6 ♦ *Court orders and legally binding agreements.* The City and County of
7 Denver, for instance, is under a court order that governs hiring practices
8 for police officers to achieve diversity in the workforce.

- 9 ♦ *Bona fide qualifications based on sex.* In the area of privacy, hiring a
10 female prison guard for the purpose of searching female inmates is an
11 example of a bona fide qualification based on sex.

12 **Remedies.** Violations of current discrimination laws are corrected through a
13 variety of remedies. Examples of remedies available under current employment law
14 for discrimination include paying lost wages, hiring or reinstating employees, and
15 allowing admission to or continuation in a training program. The measure requires
16 that the same remedies for anti-discrimination law be used for violations of
17 Amendment 46.

18 **Arguments For**

- 19 1) Amendment 46 treats everyone equally in employment, education, and
20 contracting, as originally intended by the Civil Rights Act of 1964. Discrimination
21 occurs when people are given preference based on their race or gender rather than
22 their qualifications. This practice leads to resentment and divisiveness. Amendment
23 46 ensures that people are evaluated fairly without regard to race or gender.

- 24 2) Many people face challenges, regardless of their race or gender. Minorities and
25 women are not the only ones who need assistance in gaining the skills necessary to
26 compete and succeed in today's economy. Amendment 46 allows government
27 agencies in Colorado to focus on improving access to public employment, education,
28 and contracting for everyone.

29 **Arguments Against**

- 30 1) Race- and gender-based programs provide greater access to employment,
31 education, and business opportunities for historically disadvantaged groups. These
32 programs have been successful in promoting diversity and correcting past
33 discrimination, but equality has not yet been achieved. Women and minorities earn
34 less, are under-represented, and receive only a fraction of public contracting dollars
35 when compared to non-minority or male groups. Colorado's colleges and universities
36 enroll low numbers of Hispanic students compared to the Hispanic population in
37 Colorado.

1 2) The impact of this measure is uncertain and potentially far-reaching. Amendment
2 46 does not define "preferential treatment" or "discrimination," leaving these terms
3 open to interpretation and resulting in lawsuits funded at taxpayers' expense. Entities
4 that do not have sufficient financial resources for a legal challenge may simply
5 discontinue offering discretionary programs that appear to provide assistance to
6 specific populations.

7 **Estimate of Fiscal Impact**