

**Initiative #82**  
**Discrimination and Certain Forms of Preferential Treatment by Government**

1 **Amendment ? proposes amending the Colorado Constitution to:**

- 2       ♦ prohibit Colorado governments from using quotas or awarding points to  
3       any individual or group on the basis of race, sex, color, ethnicity, or  
4       national origin in public employment, public education, or public  
5       contracting;
- 6       ♦ prohibit Colorado governments from discriminating against any  
7       individual or group on the same bases and in the same areas; and
- 8       ♦ make exceptions for federal programs and court orders and other  
9       legally binding agreements.

10 **Summary and Analysis**

11       Federal and state laws prohibit governments from discriminating against any  
12       individual or group based on various characteristics, including race, sex, color, or  
13       national origin. Amendment ? adds language to the Colorado Constitution expressly  
14       prohibiting discrimination by governments in Colorado. In addition, Amendment ?  
15       defines and limits preferential treatment by governments in Colorado.

16       ***Preferential treatment.*** The measure prohibits state and local governments from  
17       adopting quotas or awarding points solely on the basis of race, sex, color, ethnicity, or  
18       national origin in the areas of public employment, public education, and public  
19       contracting.

20       ***Exceptions.*** Amendment ? does not affect the following:

- 21       ♦ *State eligibility for federal programs.* For example, the Colorado  
22       Department of Transportation has a program that provides assistance  
23       to women- and minority-owned businesses to compete for federally  
24       funded projects. The state cannot receive federal highway money  
25       without the program.
- 26       ♦ *Court orders and legally binding agreements.* The City and County of  
27       Denver, for instance, is under a court order that governs hiring practices  
28       for police officers to achieve diversity in the workforce.

29       ***Allowable race and gender programs.*** The U.S. Supreme Court has ruled that  
30       the use of quotas and point systems, particularly in college admissions practices, is  
31       not allowed. It has also held that, when choosing among qualified individuals or firms,  
32       governments may consider characteristics such as race or gender under a plan to

1 correct past discrimination or to promote diversity in higher education, as long as the  
2 plan is narrowly tailored to accomplish an identified goal.

3 There are various programs in Colorado that target assistance to a particular race,  
4 gender, or ethnicity. Examples of assistance include programs to help individuals  
5 obtain financial aid for college, develop professional skills, or start a business.  
6 Programs in Colorado that do not involve quotas or points based solely on race, sex,  
7 color, ethnicity, or national origin are not affected by Amendment ?.

### 8 **Arguments For**

9 1) Amendment ? preserves educational outreach, training, and recruitment  
10 programs that provide opportunities for historically disadvantaged groups. Minorities  
11 and women still experience the effects of past-discrimination by earning less and  
12 being under-represented in many fields. By preserving outreach programs,  
13 Amendment ? helps to achieve equality for women and minorities in education,  
14 employment, and contracting.

15 2) The measure creates a precise definition for preferential treatment in Colorado.  
16 This clarity in the constitution provides a clear path for lawmakers and the courts, and  
17 therefore could prevent costly litigation paid for by the taxpayer. Additionally, this  
18 definition of preferential treatment is a guideline for developing and offering legally  
19 acceptable programs to minorities and women in the areas of public employment,  
20 education, and contracting.  
21

### 22 **Arguments Against**

23 1) Amendment ? does not solve the underlying problem of discrimination caused by  
24 preferential treatment. It continues to allow governments to create special programs  
25 for people based on their race or gender, rather than their qualifications. Further, the  
26 U.S. Supreme Court has already determined that quotas and point systems based  
27 solely on race, sex, color, ethnicity, or national origin are not allowed so Amendment ?  
28 does not change current practice.

29 2) The idea of giving preference to an individual based on race or gender is outdated  
30 for today's society. Race, color, ethnicity, and national origin are becoming more  
31 difficult to define as more Americans identify themselves as multi-racial and bi-racial.  
32 Furthermore, racial classifications are divisive for society; preferencing one group over  
33 another based on race does nothing to promote equal and fair treatment for everyone.

### 34 **Estimate of Fiscal Impact**