

Initiative #82
Discrimination and Certain Forms of Preferential Treatment by Governments

1 Two ballot measures propose amending the Colorado Constitution to prohibit
2 discrimination and preferential treatment by Colorado governments. **Amendment ?**,
3 **discussed below**, and Amendment 46, discussed on page ?. Both measures:

4 ♦ prohibit Colorado governments from discriminating against or granting
5 preferential treatment to any individual or group on the basis of race,
6 sex, color, ethnicity, or national origin in public employment, public
7 education, or public contracting.

8 Amendment ?:

9 ♦ defines preferential treatment as adopting quotas or awarding points
10 solely on the basis of race, sex, color, ethnicity, or national origin.

11 Amendment 46:

12 ♦ does not provide a definition for preferential treatment.

13 Voters may choose to vote for one, both, or neither of the measures. Neither
14 measure is dependent upon passage of the other. If both measures pass and conflict
15 in any way, the measure that receives the most votes prevails. If both measures pass
16 and do not conflict, then both will be implemented.

17 **Summary and Analysis**

18 Discrimination is generally defined as granting or denying privileges to an
19 individual based on certain characteristics such as race, age, or sex. The term
20 preferential treatment is commonly used to refer to policies that target historically
21 disadvantaged groups in order to remedy past and current discrimination or to
22 increase diversity.

23 The Equal Protection Clause of the U.S. Constitution protects against unequal
24 treatment of individuals by governments based on such characteristics as race and
25 gender. Currently, governments may consider race and gender when choosing
26 among qualified individuals or firms as long as they do so under a narrowly tailored
27 plan to correct discrimination or promote diversity. The use of quotas and point
28 systems, particularly in college admissions practices, is not allowed.

1 Both Amendment ? and Amendment 46 add provisions in the Colorado
 2 Constitution prohibiting discrimination and preferential treatment by Colorado
 3 governments in the areas of public employment, public education, and public
 4 contracting. Table 1 compares the two measures.

5 **Table 1. Provisions of Amendment ? and 46**

Issue	Amendment 46	Amendment ?
Does the measure prohibit <i>discrimination</i> by government on the basis of race, sex, color, ethnicity, or national origin?	Yes	Yes
Does the measure prohibit <i>preferential treatment</i> by government on the basis of race, sex, color, ethnicity, or national origin?	Yes	Yes
In what areas does the measure prohibit discrimination and preferential treatment?	Public employment, public education, and public contracting	Same as Amendment 46
Does the measure define preferential treatment?	No	Yes, adopting quotas or awarding points on the basis of race, sex, color, ethnicity, or national origin
What types of court-ordered remedies are exempt from the measure?	Court orders and other legally binding agreements currently in effect	Current and future court orders and other legally binding agreements
What types of federal programs are exempt from the measure?	Programs tied to funding	All federal programs
How does the measure treat bona fide qualifications based on sex?	In addition to federal exemption for employment, expands it to public education and public contracting	Limits it to the federal exemption for employment

30 **Provisions of Amendment ?.** Amendment ? adds language to the Colorado
 31 Constitution that prohibits discrimination or preferential treatment in the areas of public
 32 employment, public education, and public contracting on the basis of race, sex, color,
 33 ethnicity, or national origin. Amendment ? defines preferential treatment as adopting
 34 quotas or awarding points on the basis of race, sex, color, ethnicity, or national origin.
 35 The measure does not define "discrimination".

36 There are various programs and agencies in Colorado that target assistance to a
 37 particular race, gender, or ethnicity. Examples of assistance include programs to help
 38 individuals obtain financial aid for college, develop professional skills, or start a
 39 business. Programs in Colorado that do not involve quotas or award points based
 40 solely on race, sex, color, ethnicity, or national origin are not affected by

1 Amendment ?. Private organizations and programs are also unaffected by the
2 measure.

3 **Exceptions in Amendment ?.** Amendment ? does not affect the following:

4 ♦ *State eligibility for federal programs.* For example, the Colorado
5 Department of Transportation has a program that provides assistance
6 to women- and minority-owned businesses to compete for federally
7 funded projects. The state cannot receive federal highway money
8 without the program.

9 ♦ *Existing and future court orders and legally binding agreements that*
10 *provide a remedy for discrimination.* The City and County of Denver, for
11 instance, is under a court order that governs hiring practices for police
12 officers to achieve diversity in the workforce.

13 **Arguments For Amendment ?**

14 1) Everyone deserves an opportunity to succeed; however, discrimination still
15 exists in today's society. Women and minorities earn less, are under-represented in
16 education and top-paying fields, and receive fewer public contracting dollars when
17 compared to non-minority or male groups. Amendment ? places the current
18 prohibition on quotas and point systems based on race and gender into Colorado law,
19 while preserving educational outreach, training, and recruitment programs that provide
20 opportunities for historically disadvantaged groups.

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

27 **Arguments Against Amendment ?**

28 1) Amendment ? does not solve the underlying problem of discrimination caused
29 by preferential treatment. It continues to allow Colorado governments to create
30 special programs for people based on their race or gender, rather than their
31 qualifications. Racial classifications are divisive for society; preferencing one group
32 over another based on race does nothing to promote equal and fair treatment for
33 everyone. Further, the U.S. Supreme Court has already determined that quotas and
34 point systems based solely on race, sex, color, ethnicity, or national origin are not
35 allowed so Amendment ? does not change current practice.

36 2) The idea of giving preference to an individual based on race or gender is outdated
37 for today's society. Race, color, ethnicity, and national origin are becoming more
38 difficult to define as more Americans identify themselves as multi-racial and bi-racial.
39 Amendment ? fails to align state policies with the modern world.

1 **Estimate of Fiscal Impact**

2 The amendment is assessed at having no fiscal impact. U.S. Supreme Court
3 decisions prohibit public hiring, admissions, and contracting practices that use quotas
4 or award points on the basis of race, sex, color, ethnicity, or national origin. State and
5 local governments will follow the law but some judicial actions may arise in interpreting
6 the law.