

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 ♦ prohibits programs and policies that use quotas or award points based
10 on these characteristics.

11 Amendment 46:

12 ♦ prohibits programs and policies that give preferential treatment based
13 on these characteristics.

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

18 **Summary and Analysis**

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

23 The U.S. Constitution protects individuals against unequal treatment by
24 governments based on such characteristics as race and gender. Currently,
25 governments may consider race and gender when choosing among qualified
26 individuals or firms as long as they do so under a narrowly tailored plan to correct
27 discrimination or promote diversity. The use of quotas and point systems, particularly
28 in public college admissions practices, is rarely allowed.

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

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Table 1. Provisions of Amendment ? and Amendment 46		
Issue	Amendment 46	Amendment ?
Does the measure prohibit <i>discrimination</i> and <i>preferential treatment</i> by government on the basis of race, sex, color, ethnicity, or national origin?	Yes	Yes
What government programs and policies does the measure ban?	Any preferential treatment based on race, sex, color, ethnicity, or national origin	Any use of quotas or point systems based on race, sex, color, ethnicity, or national origin
In what areas does the measure prohibit discrimination and preferential treatment?	Public employment, public education, and public contracting	Same as Amendment 46
What types of court-ordered remedies involving preferential treatment are permissible under the measure?	Court orders and other legally binding agreements currently in effect	Current and future court orders and other legally binding agreements
Can governments in Colorado participate in federal programs that require preferential treatment?	Yes, if funding depends on such preferential treatment	Yes, regardless of funding
Does the measure permit discrimination based on sex if it is necessary for a particular government's operation?	Yes, for public employment, public education, and public contracting	Yes, for public 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 on

1 race, sex, color, ethnicity, or national origin are not affected by Amendment ?. Private
2 organizations and programs are also unaffected by the 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.

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

12 **Arguments For Amendment ?**

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

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

26 **Arguments Against Amendment ?**

27 1) Amendment ? does not change current practice. Colorado governments will
28 still be able to create special programs that tie eligibility to race or gender, rather than
29 a person's qualifications. Preferencing one group over another based on race or
30 gender does nothing to promote equal and fair treatment for everyone, and treats
31 women and minorities as if they cannot succeed on their merits. The U.S. Supreme
32 Court has already determined that quotas and point systems based on race, sex,
33 color, ethnicity, or national origin can only be used in very limited circumstances.

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

1 **Estimate of Fiscal Impact**

2 The measure is not expected to have any impact on state and local revenue or
3 spending. State agencies do not anticipate changing their current practices with
4 regard to public hiring, admissions, and contracting.