

Amendment 46
Discrimination and Preferential Treatment by Governments

1 **Ballot Title:** An amendment to the Colorado constitution concerning a prohibition
2 against discrimination by the state, and, in connection therewith, prohibiting the state
3 from discriminating against or granting preferential treatment to any individual or group
4 on the basis of race, sex, color, ethnicity, or national origin in the operation of public
5 employment, public education, or public contracting; allowing exceptions to the
6 prohibition when bona fide qualifications based on sex are reasonably necessary or when
7 action is necessary to establish or maintain eligibility for federal funds; preserving the
8 validity of court orders or consent decrees in effect at the time the measure becomes
9 effective; defining "state" to include the state of Colorado, agencies or departments of
10 the state, public institutions of higher education, political subdivisions, or governmental
11 instrumentalities of or within the state; and making portions of the measure found
12 invalid severable from the remainder of the measure.

13 **Text of Proposal:**

14 *Be it Enacted by the People of the State of Colorado:*

15 Article II of the constitution of the state of Colorado is amended by the addition of the
16 following section:

17 SECTION 31: NONDISCRIMINATION BY THE STATE

18 (1) THE STATE SHALL NOT DISCRIMINATE AGAINST, OR GRANT PREFERENTIAL
19 TREATMENT TO, ANY INDIVIDUAL OR GROUP ON THE BASIS OF RACE, SEX, COLOR,
20 ETHNICITY, OR NATIONAL ORIGIN IN THE OPERATION OF PUBLIC EMPLOYMENT, PUBLIC
21 EDUCATION, OR PUBLIC CONTRACTING.

22 (2) THIS SECTION SHALL APPLY ONLY TO ACTION TAKEN AFTER THE SECTION'S
23 EFFECTIVE DATE.

24 (3) NOTHING IN THIS SECTION SHALL BE INTERPRETED AS PROHIBITING BONA FIDE
25 QUALIFICATIONS BASED ON SEX THAT ARE REASONABLY NECESSARY TO THE NORMAL
26 OPERATION OF PUBLIC EMPLOYMENT, PUBLIC EDUCATION, OR PUBLIC CONTRACTING.

27 (4) NOTHING IN THIS SECTION SHALL BE INTERPRETED AS INVALIDATING ANY COURT
28 ORDER OR CONSENT DECREE THAT IS IN FORCE AS OF THE EFFECTIVE DATE OF THIS
29 SECTION.

1 (5) NOTHING IN THIS SECTION SHALL BE INTERPRETED AS PROHIBITING ACTION THAT
2 MUST BE TAKEN TO ESTABLISH OR MAINTAIN ELIGIBILITY FOR ANY FEDERAL PROGRAM,
3 IF INELIGIBILITY WOULD RESULT IN A LOSS OF FEDERAL FUNDS TO THE STATE.

4 (6) FOR THE PURPOSES OF THIS SECTION, "STATE" SHALL INCLUDE, BUT NOT
5 NECESSARILY BE LIMITED TO, THE STATE OF COLORADO, ANY AGENCY OR DEPARTMENT
6 OF THE STATE, ANY PUBLIC INSTITUTION OF HIGHER EDUCATION, ANY POLITICAL
7 SUBDIVISION, OR ANY GOVERNMENTAL INSTRUMENTALITY OF OR WITHIN THE STATE.

8 (7) THE REMEDIES AVAILABLE FOR VIOLATIONS OF THIS SECTION SHALL BE THE SAME,
9 REGARDLESS OF THE INJURED PARTY'S RACE, SEX, COLOR, ETHNICITY, OR NATIONAL
10 ORIGIN, AS ARE OTHERWISE AVAILABLE FOR VIOLATIONS OF THEN-EXISTING COLORADO
11 ANTI-DISCRIMINATION LAW.

12 (8) THIS SECTION SHALL BE SELF-EXECUTING. IF ANY PART OF THIS SECTION IS FOUND
13 TO BE IN CONFLICT WITH FEDERAL LAW OR THE UNITED STATES CONSTITUTION, THE
14 SECTION SHALL BE IMPLEMENTED TO THE MAXIMUM EXTENT THAT FEDERAL LAW AND
15 THE UNITED STATES CONSTITUTION PERMIT. ANY PROVISION HELD INVALID SHALL BE
16 SEVERABLE FROM THE REMAINING PORTIONS OF THIS SECTION.