

POLICY NOTE

Citizens' Guide to Referendum 88, a measure to approve or reject the use of race-based affirmative action by public officials in Washington state

by Paul Guppy, Vice President for Research

October 2019

Key Findings

1. If approved, Referendum 88 would confirm the legislature's passage of Initiative 1000 during the 2019 legislative session. Initiative 1000 would allow public officials to use race, gender and ethnicity as a factor in giving out public benefits.
2. Initiative 1000 seeks to repeal the voter-passed 1998 Washington Civil Rights Act, which banned affirmative action and government race-based discrimination.
3. Discrimination would be allowed at all levels of government; state, county, city, public schools and public universities.
4. Initiative 1000 would change the technical definition of "preferential treatment" so that affirmative action would be allowed.
5. Referendum 88 opponents say government officials should not favor or dis-favor people based on appearance or skin color.
6. A vote to "Approve" Referendum 88 means the 1998 Civil Rights Act would be repealed and government would be able to use race-based affirmative action.
7. A vote to "Reject" Referendum 88 means the 1998 Civil Rights Act would stay in place and race-based affirmative action would continue to be banned in Washington state.

Introduction

Referendum 88 is a proposed measure on the November ballot that asks voters whether they want to approve or reject a new law passed by the legislature that would allow public officials to use race-based affirmative action in making decisions that affect citizens.

The group Let People Vote collected 213,268 signatures to place the measure on the ballot.¹

Background

Race-based affirmative action by public officials has been banned in Washington state since voters passed the Washington Civil Rights Act in 1998. In April 2019 the legislature passed a bill, Initiative 1000, to bring race-based affirmative action back as government policy.

Many voters may be unsure of what "Approve" and "Reject" mean as these terms appear on the ballot. Here is a brief explanation.

A vote to "Approve" Referendum 88 would confirm passage of Initiative 1000, which would repeal the voter-passed 1998 Washington Civil Rights Act and would allow state and local officials to engage in discrimination based on race, ethnicity or gender in public schools and universities, public hiring and government contract work.

A "Reject" vote on Referendum 88 would stop Initiative 1000, and would maintain current civil rights law to prevent government officials from engaging in discrimination based on race, ethnicity or gender. A "Reject" vote means public officials would be barred from engaging in implicit or explicit racial bias and would be guided by an inclusive policy of equal treatment for all.

Ballot title

The ballot title for Referendum 88 states:

"The legislature passed Initiative Measure No. 1000 concerning affirmative action and remedying discrimination, and voters have filed a sufficient referendum petition on this act. Initiative 1000 would allow the state to remedy discrimination for certain groups

¹ "Reject Referendum Measure 88!" Let People Vote, accessed September 19, 2019, at <https://www.letpeoplevote.org/>.

and to implement affirmative action, without the use of quotas or preferential treatment (as defined), in public education, employment, and contracting.”

(Note: Initiative 1000 would change the definition of “preferential treatment” to allow public officials to favor members of certain groups.)

Policy analysis

The Washington State Civil Rights Act was passed as Initiative 200 in 1998.² The measure passed by 58.2% to 41.8% and received a majority vote in 38 of the state’s 39 counties. Polling indicates a majority of men, women, independents and union members supported the initiative.³

Previously, public officials had used the race, ethnicity, national origin and gender of citizens as a factor in making decisions about hiring, contracting and college admissions. Passage of Initiative 200 ended this practice. The civil rights law states:

“The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”⁴

The prohibition on discrimination applies to officials at all levels of government; the state, cities, counties, colleges and universities, school districts and other local jurisdictions. It bars officials from using their perception of a person’s race, gender or ethnicity in a way that harms or benefits any resident of the state.

The initiative includes exceptions for public bathrooms, medical privacy, psychological treatment, athletic teams, undercover law enforcement, and casting for film, video, radio and live performances.

The measure did not affect any court order or consent decree that was in force on the date of enactment.

Predictions of civil rights opponents

Opponents of the Washington State Civil Rights Act made a number of predictions of what would happen if the measure passed. They said passage of Initiative 200 would:⁵

- End opportunities for women in higher education;
- End girls’ math and science programs at elementary and secondary school levels;

2 Initiative 200, The Washington Civil Rights Initiative, passed November 3, 1998, Initiatives to the Legislature, Elections and Voting, Washington Secretary of State, at www.sos.wa.gov/elections/initiatives/legislature.aspx?y=1997.

3 “Poll: I-200 passage was call for reform,” by Tom Brune, *The Seattle Times*, November 4, 1998, at www.community.seattletimes.nwsourc.com/archive/?date=19981104&slug=2781558.

4 Revised Code of Washington 49.60.400.

5 What is Initiative 200?, No! Initiative 200 Campaign flier (copy available on request), 1998, and “Statement against I-200,” Governor Gary Locke, State of Washington Voters Pamphlet, General Election, November 3, 1998, at www.sos.wa.gov/_assets/elections/voters%20pamphlet%201998.pdf.

- Close Women’s Resource centers on college campuses;
- Close the doors of equal opportunity to women and minorities;
- Eliminate job training programs that help women and minorities transition from welfare to work;
- End targeted educational opportunities, like tutoring, for children;
- Create a tangle of expensive lawsuits;
- Promote inequality among citizens.

These dire predictions did not happen. Twenty years of experience shows that the Washington State Civil Rights Act has not resulted in the harmful outcomes that opponents expected.⁶

Initiative 1000, to repeal the Washington Civil Rights Act

In April 2019 the legislature passed Initiative 1000, a measure to repeal the 1998 Washington Civil Rights Act and again allow public officials to use a person’s race, sex, ethnicity, national origin, age, and other considerations as “factors considered in the selection” of people who will receive or be denied access to public benefits in hiring, contracting, and education.⁷

In addition, the measure would narrow the legal definition of “preferential treatment” so that it only applies when race, ethnicity or gender is the “sole qualifying factor” used by a public official to grant or deny someone a public benefit.⁸

Initiative 1000 would thus legalize official discrimination based on race, ethnicity or gender when officials say such discrimination is not the only reason a person is granted or denied access to employment, grants and contracts, or admission to a public university.

The permitted discrimination would apply at all levels of government; the state, counties, cities, school districts, fire districts, ports and other units of local government.

This represents a change from current civil rights law, which states that officials at any level of government may not consider race, ethnicity or gender to benefit or discriminate against any person in the normal conduct of public business.

Including this provision allows supporters of Initiative 1000 to claim the measure would re-legalize “affirmative action that does not constitute preferential treatment,” because the initiative would change the technical definition of “preferential treatment” so that it doesn’t include affirmative action.

6 See “Toward a more equal society, making Initiative 200 work,” by Robert Holland, Policy Brief, Washington Policy Center, May 1999, at www.washingtonpolicy.org/publications/detail/toward-an-equal-society-makinginitiative-200-work.

7 Text of Initiative 1000, Part II, Section 11(c).

8 Text of Initiative 1000, Part II, Section 11(d).

Support for Initiative 1000

Initiative 1000 was sponsored by the group One Washington Equality Campaign, which describes itself as:

“...a statewide movement for Diversity, Equity & Inclusion in public education, jobs, and government contracting for qualified women, veterans, persons with disabilities and people of color.”⁹

The group says its purpose is to redefine the term “affirmative action” and provide benefits for women, veterans, persons with disabilities, people of color, add “sexual orientation” to all state anti-discrimination laws, and create the Washington State Governor’s Commission on Diversity, Equity and Inclusion.¹⁰

Opposition to Initiative 1000

The Washington State Asian Coalition opposes the measure, saying Initiative 1000 would replace an official principle of “equality for all” with “equality for some.” In a statement the coalition said,

“We view it as a serious threat to the Asian American community throughout Washington and the principle of equality under the law.”¹¹

Another opposing group, Reject Referendum 88, says approving Initiative 1000 “would allow government-sponsored discrimination” and “allow unaccountable bureaucracy to implement different rules for different races.”¹²

The group says the measure would harm veterans and their families, would “allow government to inject race into college admissions and government employment” and would “drive us further apart.”¹³

Separately, Asian-American students have sued Harvard University for its affirmative action program, saying the university’s race-based admissions policy discriminates against them.¹⁴ Initiative 1000 would allow public universities in Washington state to adopt similar admissions policies.

Conclusion

Supporters of Referendum 88 (and of Initiative 1000) say that the government should be allowed to use racial, ethnic and color divisions among citizens in the

9 One Washington Equality Campaign, accessed February 4, 2019, at <http://www.yeson1000.com/about-i-1000.html>.

10 Ibid.

11 “Washington state backers submit signatures for I-1000, to re-legalize affirmative action,” by Daniel Beekman, *The Seattle Times*, January 10, 2019, at <https://www.seattletimes.com/seattle-news/politics/washington-state-backers-submit-signatures-for-i-1000-to-re-legalize-affirmative-action/>. See also, “WA Asians for Equality, Asian-Americans fighting for equality in Washington state,” at <https://waasians4equality.org/i-1000/>, accessed January 16, 2019.

12 Reject Referendum Measure 88 campaign, accessed September 19, 2009.

13 Ibid.

14 “A lawsuit by Asian-American students against Harvard could end affirmative action as we know it,” by Katie Reilly, *Time Magazine*, October 16, 2018, at <http://time.com/5425147/harvard-affirmative-action-trial-asian-american-students/>.



Paul Guppy is the Vice President for Research at Washington Policy Center. He is a graduate of Seattle University and holds graduate degrees from Claremont Graduate University and the London School of Economics. He worked for 12 years in the U.S. Congress as a Chief of Staff and Legislative Director. As the Vice President for Research, he writes extensively on tax policy, public finance and other issues. He is a frequent commentator on radio and TV news programs, and in newspapers across the state.

management of government programs, and that this will lead to a more inclusive society for all.

Opponents of Referendum 88 say that the 1998 Washington Civil Rights Act is working and should not be repealed. They say public officials should not be permitted to use factors such as race, gender and ethnicity to engage in discrimination that harms Washington citizens. They say decisions about public hiring, contracting and university admissions should invoke principles of social equity and equal treatment for all, based on the individual merits of the applicants, not on group identity.

Washington Policy Center is an independent research organization in Washington state.

Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

Published by
Washington Policy Center
© 2019

washingtonpolicy.org
206-937-9691