

Initiative 1000, to repeal the Washington Civil Rights Act

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Key Findings

1. **Initiative 1000 would allow public officials to use a person's race, gender or ethnicity in the administration of public benefits.**
2. **In 1998, voters passed Initiative 200 to bar the use of race, gender or ethnic discrimination by public officials in Washington state. I-1000 seeks to repeal the I-200 law.**
3. **Discrimination would be allowed at all levels of government; state, county and city, and in public schools and universities.**
4. **Initiative 1000 would change the technical definition of "preferential treatment" so that it doesn't include affirmative action.**
5. **I-1000 is supported by the One Washington Equality Campaign and by Governor Jay Inslee.**
6. **In addition to I-200 supporters, I-1000 is opposed by the Washington Asians For Equality, which fears Asian-Americans will become subject to government-sponsored discrimination.**
7. **I-1000 opponents say a policy of non-discrimination is the right principle, and that government officials should not go back to favoring or dis-favoring people based on their perceived appearance.**

Introduction

Supporters of a measure to repeal the Washington Civil Rights Act report they have collected over 387,000 signatures, well beyond the 260,000 valid signatures needed to submit the measure to the Legislature.¹ Once it is received, lawmakers have three options: they can pass Initiative 1000 as written; they can do nothing and send the measure to voters on the 2019 November ballot; or they can enact an amended version, in which case both the amended version and the original version of Initiative 1000 would be sent to voters.

If passed, the Initiative would repeal the Civil Rights Act of 1998 and permit state and local officials to use a person's race, gender or ethnicity as a factor in deciding who may receive or be denied public benefits.

Background

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 law states:

1 "Washington state backers submit signatures for I-1000, to re-legalize affirmative action," by Daniel Beekman, *The Seattle Times*, January 10th, 2019.

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.

“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;
- 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. Nearly 20 years of experience of I-200 as state law indicates that passage of the Washington State Civil Rights Act has not led to the harmful predictions of its opponents coming true.⁶

Text of Initiative 1000

Initiative 1000 would repeal the Initiative 200 law 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, Initiative 1000 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

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.

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).

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.

Support for Initiative 1000

Initiative 1000 is 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

Governor Inslee has announced that he supports passage of Initiative 1000. In a statement he said:

“I-1000 is a well-considered approach to updating our state’s policies and ensuring diversity, equity and inclusion in government contracts, employment and schools. This policy will help provide the pathways to opportunity that all our communities deserve.

“Once the Secretary of State validates the signature, ...I will make it a priority to have it passed by the Legislature in the upcoming session.”¹¹

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

¹⁰ Ibid.

¹¹ “Inslee statement supporting legislative action to enact I-1000,” Governor Jay Inslee, press release, January 4, 2019.

Opposition of the Asian Coalition

The Washington Asians for Equality oppose 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.”¹²

Separately, Asian-American students have sued Harvard University for its affirmative action program, saying the university’s race-based admissions policy discriminates against them.¹³ Initiative 1000 would allow public universities in Washington state to adopt similar admissions policies.

Conclusion

Supporters of Initiative 1000 say that the government should be allowed to use racial, ethnic and color divisions among citizens in the management of public programs.

Opponents say that the Initiative 200 law, the Washington Civil Rights Act, is working and should not be repealed. They say public officials should not be permitted to consider factors such as race, gender or ethnicity to engage in discrimination that harms Washington citizens. They say decisions about public hiring, contracting and university admissions should be made based on the individual merits of the applicants, not on group identity.

The Washington Civil Rights Act serves the public interest because it bars public officials from using their perception of a

¹² “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.

¹³ “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/>.

person's race, ethnicity or gender to engage in discrimination against that person. Over 20 years of experience shows that this civil rights law serves the public interest by promoting the fair and impartial administration of government programs, without officials engaging in personal racism or favoritism.

The Initiative 200 law has been successful as public policy, and its purpose in promoting fairness is working as voters intended. It has also helped ensure that public officials do not use their personal perceptions about race and color to make decisions that harm people's equal access to education, jobs, contracts and other public benefits.

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