

## Implementing Initiative 200: Keeping Faith with the Voters

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On November 3, 1998 the voters of Washington passed Initiative 200, a ballot measure that bans race and gender discrimination by state and local governments. The measure garnered 58% of the nearly 1.9 million votes cast on election day. It passed in all 39 counties except King, and in every part of that county except the city of Seattle.

Initiative 200 marked the first time in state history that a major civil rights law was enacted by direct popular vote. Three decades before passage of Initiative 200, the implementation of civil rights laws fell to elected officials, bureaucrats and universities. While initially striving for equal opportunity regardless of color, state affirmative action programs gradually created an in-grained preference system based on race and gender.

### The Washington Civil Rights Initiative

The main provision of Initiative 200 inserted a basic principle into state law:

*"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."*

Supporters and opponents of Initiative 200 share the same goal: fair and equal treatment for everyone in a state that is becoming increasingly racially and culturally diverse. Supporters of Initiative 200, however, view the policies the government once used to advance fair and equal treatment as themselves a violation of equal treatment. Initiative 200 sends a clear message that voters want the government to

stop using preferential treatment in the effort to create equal opportunity.

### The State of our States

Initiative 200 is similar in wording to Proposition 209, the California measure passed in 1996 to end race and gender preferences in that state. Both governors used their executive powers to guide their state governments in implementing the new law. California Governor Pete Wilson issued an executive order on November 6, 1996, while Washington's Governor Locke released a directive on December 3, 1998.

A comparison of the two approaches is helpful in understanding how effectively Initiative 200 has been implemented. Below are the basic steps taken in Governor Wilson's executive order.

#### Summary of Gov. Wilson's Steps to Civil Rights Compliance:

1. Eliminated all state statutes and programs that grant or encourage preferences based on race and gender.
2. Race- and gender based programs had to be submitted to the Governor's office within three weeks for termination.
3. Created regulations that prohibit the operation of any law, policy or practice that discriminates or gives preferential treatment in public contracting, public hiring and public education.
4. Specified measures to recruit qualified applicants from all segments of the workforce.
5. Directed agencies, departments, boards and commissions that administered preferences to submit specific recommendations for the equal treatment of all citizens.

In comparison, Governor Locke's directive is not as thorough as that issued by his California counterpart. While many elements of the Washington directive move state government in the right direction, Governor Locke's overall approach is more timid than Governor Wilson's.

Governor Locke directed state agencies to review policies and procedures that conflict with the new law. He did not require, however, any state agency to submit these policies or procedures to his office for direct review. Also, the Governor discontinued the parts of the Plus 3, Exception Testing and Exam Screening programs where race and sex are the tie-breaking factor, but he left much of the original affirmative action structure in place. Race and gender considerations continue for outreach purposes and in the hiring and contracting process. Consideration of race and genders ends only when state managers are making final decisions.

Governor Locke therefore interprets Initiative 200 as allowing continuation of most of the affirmative action activities that existed before the measure became law. In general, he has taken few, if any, of the comparative steps implemented by Governor Wilson's executive order.

### **"Civil unrest that will make the 60's look like a love-in"**

So said Myron Apilado, vice president for minority affairs at the University of Washington, about the possible passage of Initiative 200. Opponents of Initiative 200 feared the worst for women and minorities in Washington state. Since Initiative 200's enactment, though, these dire predictions have failed to come to pass. While the University of Washington and state agencies grapple with civil rights compliance, most cities and counties never created official race and gender preferences in the first place, so for

them little change was needed to comply with the law.

Also, there are no current legal challenges to Initiative 200. In 1997 the Ninth Circuit Court of Appeals upheld Proposition 209. In light of this precedent, Initiative 200 opponents have apparently concluded that a similar challenge against Washington's new civil rights law would fail.

This leaves no reason, therefore, for the state to delay fully implementing the new law. In fact, nine easy steps could help the state and state-funded entities fully comply with Initiative 200. These steps are outlined in the Washington Institute policy brief "Toward an Equal Society: Making Initiative 200 Work."

### **Removing Barriers to Opportunity**

There is a proper and active part government can play in creating equal opportunity regardless of race. When Dr. Martin Luther King gave his inspirational "I have a dream" speech, he imagined a nation where people would be judged by the content of their character, not by the color of their skin. Few people, however, read further in the same speech where King states, "The Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity."

Many of the barriers to economic advancement are government regulations that fall disproportionately on minorities. Licensing rules, zoning laws, business taxes, and legal monopolies block many minority small business people from competing effectively in the marketplace.

By upholding Initiative 200 and easing unnecessary regulation, government can help move us further toward a society of greater opportunity for all people, regardless of race or gender.