

Today's Resistance to Initiative 200 is Like Opposition to Desegregation in the Old South

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On May 30, 1999 the lead editorial in The Seattle Times criticized a report by the Washington Institute's Equal Citizenship Project for saying that under Initiative 200 the state should end racial preferences in recruiting and outreach. Spokane lawyer David L. Stevens y Perez presents his analysis of where the Times editorial went wrong. Mr. Stevens can be reached at (509) 325-4080.

When some in the old South refused to accept desegregation and the end of racial discrimination, their strategy was labeled "massive resistance." When some states and the federal government maintained policies that were racist, those policies were called "institutional racism." The May 30th editorial on Initiative 200, the Washington State Civil Rights Act, is an example of a new strategy. One that should be labeled "bureaucratic" or "elitist" racism.

The characteristics of this strategy are the advocacy of opposition to state law by newspaper editors and the willful defiance of the proper implementation of a state law by an elected leader (and his unelected bureaucrats) whenever they disagree with a popularly enacted law that eliminates discrimination or preferences based on sex, race, or ethnicity. Subtlety is not its strong suit.

Opposition to the policy of ending discrimination by our state government and its agencies was to be expected. But to go as far as setting up a straw man by attributing quotes to the people supporting Initiative 200 shows the total lack of integrity most pundits on this paper have regarding this issue. *The Seattle*

Times Editorial Board writes in the May 30th editorial that, "backers [of Initiative 200] said recruitment and outreach to women and minorities could continue," and "Now, some proponents want no consideration of race, gender or ethnicity in outreach and recruitment."

It then scolds everyone who fought against the state's use of sex, race, and ethnicity in determining who gets government contracts, jobs, or an education, for not honoring a promise that was never made.

We should challenge these editorial elitists to tell us where and when any Initiative 200 supporter said that outreach would not be affected by the new civil rights law? To give them a starting place, a simple online internet search shows several possibilities. Perhaps it was when Tim Eyman, a Initiative 200 leader, said, "It will not affect affirmative action in the private sector, or government outreach programs that try to make sure everyone will be lifted up to meet a higher standard that is the same for everyone."¹

Or maybe it was when Initiative 200 backer Rep. Scott Smith (R-Graham) said, "They can still have programs that might benefit a specific group as long as it's open to anybody."² It couldn't have been when Initiative 200 Chairman John Carlson said, "My law department and staff have told me that a number of our outreach and recruitment

¹ *The Seattle Times*, November 13, 1997.

² *The Seattle Post-Intelligencer*, April 27, 1998.

programs would be subject to legal challenge based on the wording of I-200.”³

It could be that the online search for this elusive promise was too narrow because it only recognized direct quotations. The promise might then be found in John Carlson's statement that “Nonexclusive outreach and recruitment programs would be unaffected.”⁴ Or it could be from an editorial written by Carlson in which he wrote, “I-200 is a referendum on when affirmative action goes too far. Recruitment and outreach based on people's circumstances are one thing. Preferences based on skin color are another.”⁵

Of course in the end, it does not matter what Carlson, Eyman or Smith said. UW Law Professor Eric Schnapper pointed out in his editorial opposing the end of state discrimination that asking any of them to keep such a promise, “would make sense only if Carlson or Smith were running for Race and Gender Czar of Washington, since their pronouncements would be something like campaign promises. But Initiative 200 [is] a law; the Washington Supreme Court obviously [should] not and would not telephone Smith or Carlson to ask what it mean[s]. Judges required to interpret Initiative 200 have to decide which programs are prohibited by looking at the language of the provision.”⁶

Nor does it matter what elitists who sit on newspaper editorial boards feel when they opine that polls should be used to interpret the effect of state law. Even Governor Gary Locke's resistance to the eradication of institutional racism will not matter when courts apply the Washington Civil Rights Act in the real world.

As Professor Schnapper and the state Attorney General have pointed out, the text of

³ *The Columbian*, March 4, 1998.

⁴ Paraphrase of Carlson in *USA Today*, October 21, 1998.

⁵ *The Seattle Post-Intelligencer*, October 18, 1998.

⁶ *The Seattle Post-Intelligencer*, June 7, 1998.

the statute and the explanatory material in the 1998 Voter's Pamphlet will be the primary sources to interpret the statute--not opinion polls, not the Governor, not the initiative's drafters and definitely not *The Seattle Times* editors.⁷

Eliminating discrimination as the Initiative 200 law requires, “on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting,” will be difficult. Evidence of how difficult is found in the statute itself. The Washington State Code Reviser has decided when codifying I-200 that it eliminates affirmative action, contrary to any expressed or implied authority within the text of Initiative 200. *The Times* editorial goes as far as attacking a Washington Institute Foundation (WIF) study on Initiative 200, without letting readers know that the study is available free from WIF and can be accessed at its website.

Given these underhanded tactics, many like me are resigned to taking legal action to enforce the will of the people. We are not naïve and are prepared to fight to ensure equality for all before the law. The fight will not be clean or fair. Those who believe that discrimination is the way the government should conduct its business will resort to any machination and will attack with any criticisms in order to stall our efforts. Their tactics will get more and more desperate until they, like the segregationists of the old South, realize that advocacy of government discrimination or endorsement of government-sponsored racial spoils system will no longer be tolerated in civil society.

The Equal Citizenship Project is part of the Washington Policy Center and is devoted to researching public policy issues that affect the civil rights of all Washington citizens. The Project is funded by grants from The John M. Olin Foundation and The Lynde and Harry Bradley Foundation. Its website is at wips.org.

⁷ See state Attorney General Memo on I-200, October 16, 1998.