

Referendum Measure No.

88

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

Should Initiative 1000 be:

Approved

Rejected

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Final Votes Cast by the Legislature

Senate: Yeas, 26; Nays, 22; Absent, 0; Excused, 1

House: Yeas, 56; Nays, 42; Absent, 0; Excused, 0



You are voting to Approve or Reject the measure passed by the Legislature

Approve — you favor the measure passed by the Legislature

Reject — you do not favor the measure passed by the Legislature



The Secretary of State is not responsible for the content of statements or arguments (WAC 434-381-180).

Explanatory Statement

Written by the Office of the Attorney General

The Law as it Presently Exists

Until 1998, Washington law allowed the use of affirmative action in public education, public contracting, and public employment, subject to constitutional limits on the use of affirmative action. In 1998, Washington voters approved Initiative 200 (I-200). I-200 prohibits state and local government from making decisions on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, and public contracting.

I-200 provides several exceptions involving disparate treatment based on sex. It does not apply to lawful classifications that are based on sex and are necessary for sexual privacy; medical or psychological treatment; undercover law enforcement; or film, video, audio, or theatrical casting. I-200 also allows separate athletic teams for each sex.

I-200 permits state and local governments to participate in federal programs that require actions that I-200 would otherwise prohibit. This allows state and local agencies to receive federal funds when federal law requires certain measures based on race, sex, or other categories.

The Effect of the Proposed Measure if Approved

The public vote on Referendum 88 will decide whether Initiative 1000 (I-1000) becomes law.

I-1000 would allow the state to remedy documented discrimination or underrepresentation of disadvantaged groups in public education, employment, and contracting. Whether a group is disadvantaged would be determined by a valid disparity study or proven in court.

I-1000 would also allow affirmative action to increase diversity in public education, public employment, and public contracting. I-1000 would define affirmative action as a policy that considers an individual's race, sex, ethnicity, national origin, age, sensory, mental or physical disability, or veteran or military status, when selecting qualified persons for opportunities in public education, public employment, and public contracting. Affirmative action would include, for example, recruitment, hiring, training, promotion, outreach, setting and achieving goals and timetables, and other measures to increase diversity. Affirmative action could not be used to impose quotas. In addition, race, sex, color, ethnicity, national origin, age, sexual orientation, sensory, mental or physical disability, and veteran or military status could not be used as the sole qualifying factor to select a less qualified person over a more qualified person.

I-1000 would not prohibit state and local government from taking actions needed to establish or maintain eligibility for federal programs. But before such actions could be taken, certain state government officials would have to determine that it was necessary to avoid a material loss of federal funds.

I-1000 would also establish a Governor's commission on diversity, equity, and inclusion. The commission would monitor and enforce agency compliance with I-1000. The commission could propose or oppose legislation. It would publish annual reports on the progress of agencies in achieving diversity, equity, and inclusion in public education, public employment, and public contracting. Various elected and appointed officials would serve on the commission.

Fiscal Impact Statement

Written by the Office of Financial Management
For more information visit www.ofm.wa.gov/ballot

FISCAL IMPACT SUMMARY

Initiative 1000 was enacted in the 2019 legislative session, but has not gone into effect because the voters submitted petitions to refer the measure to the November 2019 general election ballot. If the voters approve the referendum, Initiative 1000 would go into effect and the total costs to the state in the 2019–21 biennium and ongoing would be \$1.5 million. There are no known state or local revenue impacts that would result from the passage of this measure.

SUMMARY

Referendum 88 would place Initiative 1000 onto the ballot for approval or rejection by the voters.

Initiative 1000 permits the state to adopt policies that allow an individual's race, sex, ethnicity, national origin, age, the presence of any sensory, mental, or physical disability, and honorably discharged veteran or military status to be factors considered in the selection of qualified applicants for opportunities in public education, public employment, and public contracting. Initiative 1000 does not allow an individual's race, color, sex, ethnicity, national origin, age, sexual orientation, the presence of any sensory, mental or physical disability, and honorably discharged veteran or military status to be used as the sole qualifying factor to select a lesser qualified candidate over a more qualified candidate for a public education, public employment or public contracting opportunity.

Initiative 1000 creates the Governor's Commission on Diversity, Equity, and Inclusion (Commission). The Commission is responsible for planning, directing, monitoring and enforcing each state agency's

compliance with the initiative. The Commission is required to publish an annual report on the progress of all state agencies in achieving diversity, equity and inclusion in public education, public employment, and public contracting. The Governor appoints some commission members, who serve four-year terms. Other members are the directors or chairs of 25 state agencies, councils, or boards. The Commission also includes two state senators, one from each of the two largest caucuses, appointed by the president of the Senate, and two members of the state House of Representatives, appointed by the speaker of the House of Representatives. Legislative members serve two-year terms.

GENERAL ASSUMPTIONS

- The effective date of the referendum if approved is December 5, 2019.
- Estimates use the state's fiscal year of July 1 through June 30. Fiscal year 2020 is July 1, 2019, to June 30, 2021.
- The Governor's Office of Diversity, Equity, and Inclusion will hold six meetings in Olympia, three meetings in Seattle, and three meetings in Eastern Washington.

REVENUE

The referendum has no known state or local revenue impact.

EXPENDITURES

A vote to approve the referendum would result in costs for state government for the creation of the Governor's Office of Diversity, Equity and Inclusion and for implementation of the policies allowed under Initiative 1000.

Costs related to creating an office and conducting commission activities are estimated to be \$582,000 for the 2019–21 biennium and ongoing. These include salaries and benefits for a full-time policy analyst and a part-time administrative assistant to staff the commission to make appointment recommendations to the Governor, plan monthly commission meetings and pay for meeting rental charges, legal services, and travel costs for commission staff.

Costs related to commission meetings for agencies required to participate in the commission and expected to pay their own travel costs are approximately \$3,000 per agency, when counting only the travel costs, and up to \$38,000 per agency when the cost of staff is included. This cost would be ongoing.

Costs related to reporting and compliance at state agencies and universities depend upon the level of tracking and reporting each agency now has in place.

For the institutions of higher education, expanding the current non-discrimination categories and protected classes will add program, tracking, and reporting work. For example, the University of Washington Business Diversity and Equity, which has responsibility for the university's equity policy, reports that it will need two additional program coordinators per year at a cost of approximately \$483,000 in the 2019–21 biennium. There are likely to be similar, yet-to-be-determined costs at the other state colleges and universities and state agencies related to programming, tracking and reporting each entity's progress on diversity, equity and inclusion goals.

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Argument for

Last year, nearly 400,000 voters petitioned lawmakers to support Initiative 1000, restoring fairness and opportunity to Washington's public employment, contracting, and education enrollment policies. Our State Legislature listened, and passed I-1000. With special interests paying to overturn this law, voters must approve I-1000.

I-1000 Ensures a Level Playing Field with No Quotas

I-1000 simply restores rights consistent with 42 other U.S. states, ensuring fairness and opportunity for all people and small businesses. It allows outreach and recruitment to veterans, women, minorities, and others too often left behind in government hiring, contracting, and education. Under I-1000, quotas and preferential treatment are prohibited, and no one who is unqualified will be selected due to preferential treatment.

Improved Opportunity for Veterans and People of All Abilities

I-1000 expands laws allowing consideration for Vietnam era and disabled veterans in government contracting and employment to include all honorably discharged veterans and military personnel, honoring the sacrifice of those delaying entry into the workforce—or returning injured or disabled.

Build a Healthy Economy, Expand Small Business Opportunities

I-1000 ensures fairness and opportunities for small businesses competing for public contracts—helping local businesses grow local jobs. And, large employers need a diverse, skilled workforce, which is why Microsoft, Alaska Airlines, Vulcan, Amazon, and many other businesses all support I-1000, joining Labor organizations and civil rights groups like the ACLU and Urban League.

We urge all Washingtonians to approve I-1000 for fairness and equal opportunity.

Rebuttal of argument against

Don't be fooled! I-1000 unifies us and creates opportunity for all! I-1000 prohibits government discrimination because of your age, gender, disability, race or veteran status without using quotas or preferences. It guarantees fairness and accountability. That's why nearly 400,000 Washington voters are standing against fear and division. We're taking action to help veterans, women, seniors, small businesses, and the disabled. Join the broad coalition of business, labor and community by approving I-1000!

Written by

Gary Locke, Democrat, Former Governor, US Ambassador, US Secretary Commerce; **Daniel J. Evans**, Republican, Former Governor; **Christine Gregoire**, Democrat, Former Governor, Attorney General; **April Sims**, Secretary Treasurer, Washington State Labor Council, AFL-CIO; **Marilyn Strickland**, CEO, Seattle Chamber of Commerce, Former Tacoma Mayor; **Rogelio Riojas**, CEO, Sea Mar Community Health Centers

Contact: (206) 682-7328; www.wafairness.org

Argument against

Referendum 88 Would Divide Us

Let's start where we all agree: There's too much division in our society today. We need solutions that bring us together. But Referendum 88 (also known as Initiative 1000) creates *more* division by allowing the government to inject race into college admissions and government employment. That's wrong. And it drives us further apart.

R-88 Would Allow Government-Sponsored Discrimination

Referendum 88 allows the government to use different rules for different races in deciding who gets into state colleges and universities, who gets hired for jobs in state, county or city government, and who gets a government contract. By separating people this way, Referendum 88 drives a deeper wedge into our community and actually empowers those who would divide us.

As a community we must not let that happen.

R-88 Would Damage Progress Already Made on Diversity

Referendum 88 would overturn a voter-approved state law that forbids discrimination and preferences based on race and gender. And the law has worked well. Our college campuses are more diverse now than before the current law was enacted.

R-88 Lacks Accountability

Referendum 88 would create a massive government agency to enforce the use of race in government employment, college admissions and public contracting. Referendum 88 would be overseen by an unelected board that would *not* be accountable to voters. A board with sweeping authority to make decisions on preferences in academic admissions and government hiring. Send the Olympia politicians who support this a message: *Reject Referendum 88!*

Rebuttal of argument for

Referendum 88 (I-1000) uses quotas and harms Veterans.

Since 1895, Washington has guaranteed honorably discharged and disabled veterans a preference in public employment. Referendum 88 eliminates that preference through a hidden loophole in Section 3. Racial quotas are implemented under Sections 8, 9, and 11, with a "disparity" study to count by race, goals to enroll and hire by race, and timetables enforced by bureaucrats. Quotas harm everyone, including our Veterans. Reject Referendum 88.

Written by

Yvonne Kinoshita Ward, Democratic Party National Delegate: 2000 (Gore), 2004 (Kerry); **Judy Warnick**, State Senator, 13th LD, R, Moses Lake; **Thomas G. Jarrard**, JD MBA, Past Chair, Washington State Veterans Bar Association; **Mary A. Radcliffe**, past Co-chair, Diversity Committee, Episcopal Diocese; **Kan Qiu**, Tiananmen Square Survivor, Chair, American Coalition for Equality; **John Carlson**, Morning Radio Broadcaster 570 KVI

Contact: 425-588-8011; campaign@reject88.com; www.reject88.com



How do I read measure text?

Language in double parentheses with a line through it is existing state law; it will be taken out of the law if this measure is approved by voters.

~~((sample of text to be deleted))~~

Underlined language does not appear in current state law but will be added to the law if this measure is approved by voters.

sample of text to be added

Complete Text

Referendum Measure No. 88

AN ACT Relating to diversity, equity, and inclusion; amending RCW 49.60.400 and 43.43.015; adding a new section to chapter 43.06 RCW; and creating new sections.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

**PART I
TITLE AND INTENT**

NEW SECTION. **Sec. 1.** This act may be known and cited as the Washington state diversity, equity, and inclusion act.

NEW SECTION. **Sec. 2.** The intent of the people in enacting this act is to guarantee every resident of Washington state equal opportunity and access to public education, public employment, and public contracting without discrimination based on their race, sex, color, ethnicity, national origin, age, sexual orientation, the presence of any sensory, mental, or physical disability, or honorably discharged veteran or military status. This is accomplished by: Restoring affirmative action into state law without the use of quotas or preferential treatment; defining the meaning of preferential treatment and its exceptions; and establishing a governor’s commission on diversity, equity, and inclusion.

**PART II
PROHIBITION OF DISCRIMINATION AND
PREFERENTIAL TREATMENT**

Sec. 3. RCW 49.60.400 and 2013 c 242 s 7 are each amended to read as follows:

(1) 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, age, sexual orientation, the presence of any sensory, mental, or physical disability, or honorably discharged veteran or military status in the operation of public employment, public education, or public contracting.

(2) This section applies only to action taken after December 3, 1998.

(3) This section does not affect any law or governmental action that does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, ~~((or))~~ national origin, age, sexual orientation, the presence of any sensory, mental, or physical disability, or honorably discharged veteran or military status.

(4) This section does not affect any otherwise lawful classification that:

(a) Is based on sex and is necessary for sexual privacy or medical or psychological treatment; or

(b) Is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or

(c) Provides for separate athletic teams for each sex.

(5) This section does not invalidate any court order or consent decree that is in force as of December 3, 1998.

(6) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if the director of the office of financial management, in consultation with the attorney general and the governor’s commission on diversity, equity, and inclusion, determines that ineligibility ~~((would))~~ will result in a material loss of federal funds to the state.

(7) Nothing in this section prohibits schools established under chapter 28A.715 RCW from:

(a) Implementing a policy of Indian preference in employment; or

(b) Prioritizing the admission of tribal members where capacity of the school’s programs or facilities is not as large as demand.

(8) Nothing in this section prohibits the state from remedying discrimination against, or underrepresentation of, disadvantaged groups as documented in a valid disparity study or proven in a court of law.

(9) Nothing in this section prohibits the state from implementing affirmative action laws, regulations, policies, or procedures such as participation goals or outreach efforts that do not utilize quotas and that do not constitute preferential treatment as defined in this section.

(10) Nothing in this section prohibits the state from implementing affirmative action laws, regulations, policies, or procedures which are not in violation of a state or federal statute, final regulation, or court order.

11 For the purposes of this section((:)):

(a) “State” includes, but is not necessarily limited to, the state itself, any city, county, public college or university, community college, school district, special district, or other political subdivision or governmental instrumentality of or within the state;

(b) “State agency” means the same as defined in RCW 42.56.010;

(c) “Affirmative action” means a policy in which an individual’s race, sex, ethnicity, national origin, age, the presence of any sensory, mental, or physical disability, and honorably discharged veteran or military status are factors considered in the selection of qualified women, honorably discharged military veterans, persons in protected age categories, persons with disabilities, and minorities for opportunities in public education, public employment, and public contracting. Affirmative action includes, but shall not be limited to, recruitment, hiring, training, promotion, outreach, setting and achieving goals and timetables, and other measures designed to increase Washington’s diversity in public education, public employment, and public contracting; and

(d) “Preferential treatment” means the act of using race, sex, color, ethnicity, national origin, age, sexual orientation, the presence of any sensory, mental, or physical disability,

and honorably discharged veteran or military status as the sole qualifying factor to select a lesser qualified candidate over a more qualified candidate for a public education, public employment, or public contracting opportunity.

~~((9))~~ (12) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Washington antidiscrimination law.

~~((10))~~ (13) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the section shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington state Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

Sec. 4. RCW 43.43.015 and 1985 c 365 s 4 are each amended to read as follows:

For the purposes of this chapter, "affirmative action" means, in addition to and consistent with the definition in section 3 of this act, a policy or procedure by which racial minorities, women, persons in the protected age category, persons with disabilities, Vietnam-era veterans, honorably discharged military veterans, and ~~((disabled))~~ veterans with disabilities are provided with increased employment opportunities. It shall not mean any ~~((sort))~~ form of quota system.

PART III

CREATION OF THE GOVERNOR'S COMMISSION ON DIVERSITY, EQUITY, AND INCLUSION

NEW SECTION. Sec. 5. A new section is added to chapter 43.06 RCW to read as follows:

(1) There is created the governor's commission on diversity, equity, and inclusion. The commission is responsible for planning, directing, monitoring, and enforcing each state agency's compliance with this act. The commission may propose and oppose legislation and shall publish an annual report on the progress of all state agencies in achieving diversity, equity, and inclusion in public education, public employment, and public contracting.

(2) The governor's commission on diversity, equity, and inclusion shall be staffed and funded within the governor's biennial budget. The executive commission members shall be appointed by the governor and serve four-year terms:

- (a) Lieutenant governor;
- (b) Attorney general;
- (c) Superintendent of public instruction;
- (d) Commissioner of the department of employment security;
- (e) Secretary of the department of transportation;
- (f) Director of the department of enterprise services;
- (g) Director of the office of minority and women's business enterprises;
- (h) Director of the department of commerce;
- (i) Director of the department of veterans affairs;
- (j) Executive director of the human rights commission;
- (k) Director of the office of financial management;
- (l) Director of the department of labor and industries;
- (m) Executive director of the governor's office of Indian affairs;
- (n) Executive director of the Washington state women's commission;

(o) Executive director of the commission on African-American affairs;

(p) Executive director of the commission on Asian Pacific American affairs;

(q) Executive director of the commission on Hispanic affairs;

(r) Chair of the governor's committee on disability issues and employment;

(s) Chair of the council of presidents;

(t) Chair of the board for community and technical colleges;

(u) Chair of the workforce training and education coordinating board;

(v) Executive director of the board of education;

(w) Chair of the board of Washington STEM;

(x) Chair, officer, or director of a state agency or nonprofit organization representing the legal immigrant and refugee community;

(y) Chair, officer, or director of a state agency or nonprofit organization representing the lesbian, gay, bisexual, transgender, and queer community;

(z) Any other agencies or community representatives the governor deems necessary to carry out the objectives of the commission.

(3) (a) The commission shall also consist of the following legislatively appointed members:

(i) Two state senators, one from each of the two largest caucuses, appointed by the president of the senate;

(ii) Two members of the state house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives.

(b) Legislative members shall serve two-year terms, from the date of their appointment.

(4) Each commission member shall serve for the term of his or her appointment and until his or her successor is appointed. Any commission member listed in subsection (2) of this section, who serves by virtue of his or her office, shall be immediately replaced by his or her duly elected or appointed successor.

(5) A vacancy on the commission shall be filled within thirty days of the vacancy in the same manner as the original appointment.

PART IV

MISCELLANEOUS

NEW SECTION. Sec. 6. Within three months following the effective date of this section, the office of program research and senate committee services shall prepare a joint memorandum and draft legislation to present to the appropriate committees of the legislature regarding any necessary changes to the Revised Code of Washington to bring nomenclature and processes in line with this act so as to fully effectuate and not interfere in any way with its intent. In preparing the memorandum and draft legislation, the office of program research and senate committee services shall consult with the sponsors of this initiative, the governor's committee on diversity, equity, and inclusion and the state human rights commission.

NEW SECTION. Sec. 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 8. For constitutional purposes, the subject of this act is "Diversity, Equity, and Inclusion."