

# Ballot Issues Education for the 2008 General Election

## Initiative 424: Constitutional Amendment to Prohibit Discrimination or Preferential Treatment

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*This proposed constitutional amendment will appear on the November 4, 2008 ballot for Nebraska voters. The University of Nebraska may be affected by the anti-affirmative action constitutional amendment, presenting a potential conflict of interest in providing education on the issue. This publication attempts to provide a fair, factual, and balanced discussion of the issue as a public service to Nebraska voters. Citizens should determine for themselves the relative merits of the issue and the arguments for and against the proposed initiative.*

## Background

On November 4, 2008, Nebraska voters will consider an amendment to the state constitution to ban many state or local government affirmative action programs (unless pending court challenges nullify the vote). The proposed constitutional amendment was brought forth by petition initiative and is modeled after similar language approved by voters in California (1996), Washington (1998), and Michigan (2006). Voters in Colorado will also face the same question this year on election day while similar efforts in Arizona, Missouri, and Oklahoma failed to reach the ballot.

The petition initiative's stated objective is to amend the state constitution to prohibit discrimination or preferential treatment in public employment, education, or contracting by the state or any of its agencies, institutions, or political subdivisions.

The petition drive is part of a multi-state effort called "Super Tuesday for Equal Rights" under the leadership of the American Civil Rights Institute (<http://www.acri.org>). Information on the petition effort in Nebraska is available on the Web site of the Nebraska Civil Rights Initiative at <http://www.nebraskacri.org>. Opponents of the affirmative action ban are organized against the proposed amendment under the banner of Nebraskans United (<http://www.nebraskansunited.org>).

What would the anti-affirmative action amendment do?

(1) It would ban discrimination against individuals or groups based on race, sex, color, ethnicity or national origin in state and local government programs and employment, including state college and University of Nebraska student admissions and employment.

(2) It would ban preferential treatment in the same circumstances. This is the main purpose of the proposed amendment.

## Proposed Constitutional Amendment

The initiative on the ballot proposes to change the Nebraska Constitution with the following text:

Be it enacted by the people of the State of Nebraska that, Article I of the Constitution of Nebraska be amended by adding a Section 30 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 in the operation of public employment, public education, or public contracting.

(2) This section shall apply only to action taken after the section's effective date.

(3) Nothing in this section prohibits bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(4) Nothing in this section shall invalidate any court order or consent decree that is in force as of the effective date of this section.

(5) Nothing in this section prohibits action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.

(6) For purposes of this section, state shall include, but not be limited to: (a) the State of Nebraska; (b) any agency, department, office, board, commission, committee, division, unit, branch, bureau, council, or subunit of the state; (c) any public institution of higher education; (d) any political subdivision of or within the state; and (e) any government institution or instrumentally of or within the state.

(7) 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 Nebraska's antidiscrimination law.

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

## Arguments

The Nebraska Secretary of State has provided capsulized statements in an informational pamphlet representing the views of both supporters and opponents of Initiative 424. Those statements follow below.

*“Proponents contend:*

*“Equality Before the Law” is Nebraska’s state motto. Unfortunately, Nebraska has ignored the state motto’s ideals and developed a system of quasi-quotas, set-asides, and specialty scholarships that pick winners and losers based on skin color and gender.*

*Voting yes on Initiative 424 will restore fairness in how people are treated in three specific areas: public contracting, public employment, and public education. This constitutional amendment mirrors the landmark 1964 Civil Rights Act and advances true equality and fairness by prohibiting discrimination and preferential treatment based on race, gender, and color.*

*Equal treatment for all people is the essence of “Equality Before the Law.” Voting yes on Initiative Measure 424 will end race and gender preferences and restore fairness in public employment, public education and public contracting.*

*“Opponents contend:*

*“This amendment hurts the University’s ability to recruit talented students and athletes. Nebraska business and education leaders oppose this because they want our University to continue its tradition of excellence in the classroom and on the playing field. It also hurts business programs needed to improve Nebraska’s economy.*

*It is already illegal to have preferences or quotas based on race or gender in contracting and employment.*

*In states that have passed similar measures programs like this were put at risk: domestic violence shelters, breast cancer research and screening programs, educational programs targeted to disadvantaged youth, and countless college scholarships.*

*This amendment is vague, confusing, and full of unintended consequences. It opens the floodgates for frivolous civil rights lawsuits and leaves taxpayers with the bill.”*

## Official Ballot Language

### Initiative Measure 424

*A vote "FOR" will amend the Nebraska Constitution to prohibit the State, any public institution of higher education, political subdivision or government institution from discriminating against, or granting preferential treatment to, individuals or groups based upon race, sex, color, ethnicity, or national origin in operating public employment, education, or contracting. Existing court orders would not be invalidated under the amendment. Bona fide qualifications based on sex reasonably necessary to normal operation of public employment, education or contracting, and actions necessary to obtain federal funds through federal programs would be permitted. A cause of action for violation would be created. The amendment would apply to actions after its adoption.*

*A vote "AGAINST" will not cause the Nebraska Constitution to be amended in such a manner.*

**Shall the Nebraska Constitution be amended to prohibit the State, any public institution of higher education, political subdivision or government institution from discriminating against, or granting preferential treatment to, individuals or groups based upon race, sex, color, ethnicity, or national origin in operating public employment, education or contracting? Existing court orders are not invalidated, bona fide qualifications based on sex reasonably necessary to normal operation of public employment, education or contracting, and actions necessary to obtain federal funds through federal programs are permitted. A cause of action for violation is created. The amendment applies to actions after its adoption. Vote for ONE**

\_\_\_\_\_ For

\_\_\_\_\_ Against

## Sources and References

Nebraska Secretary of State. "Informational Pamphlet on Initiative Measure #424 Appearing on the 2008 General Election Ballot." October 2008. Available at <http://www.sos.ne.gov>.