

Beyond Federal Law: State Voter Initiatives and Their Consequences

The Issue

In addition to federal law regarding access and diversity issues in higher education, there are rules in certain states that can affect how access and diversity policies are developed and implemented. State laws and executive orders are examples of potential methods of state expression related to access and diversity.

Notably, nothing in the Supreme Court’s diversity-related opinions applying federal nondiscrimination law specifically prohibits the enactment of state constitutional, statutory, or regulatory provisions that forbid the use of race or ethnicity in public higher education. In short, federal law establishes a “floor” upon which state law may, in appropriate circumstances, “build.” Thus, in several states, voter (or executive) initiatives have given effect to policy preferences that forbid public higher education institutions from conferring benefits or opportunities based on race, ethnicity, and gender.

The Policy Context

The following map and table provide an overview of relevant state initiatives prohibiting race-, ethnicity-, and gender-conscious policies among public higher education institutions.

Graph 3: State activity regarding public institutions’ consideration of race, ethnicity, and gender when conferring educational benefits for students.

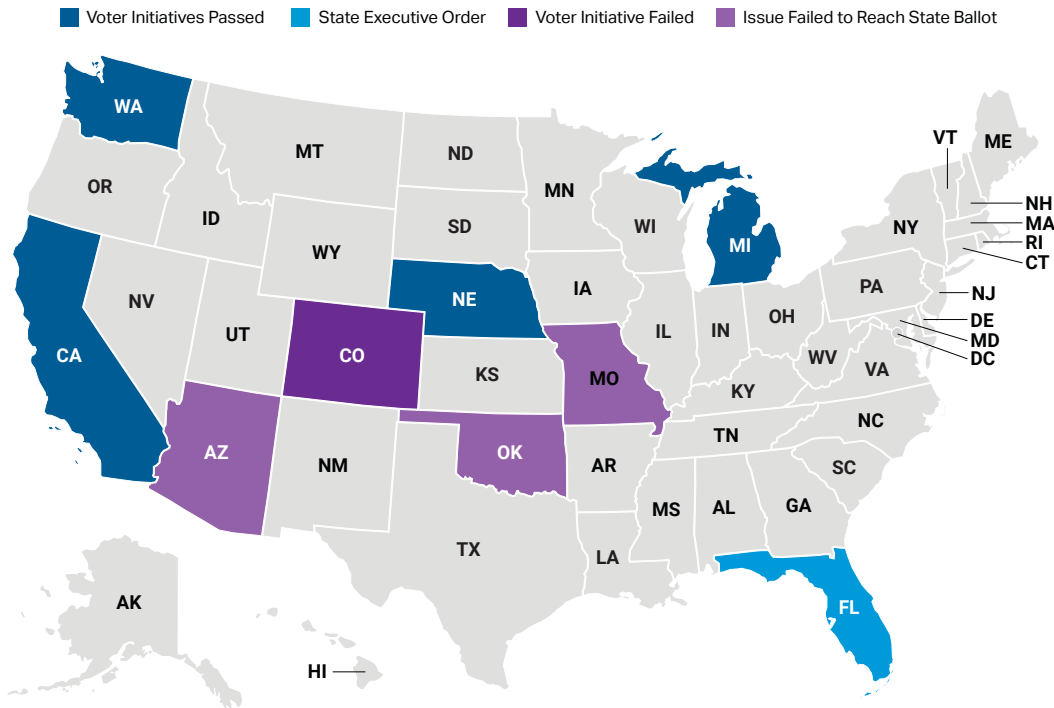


Table 3: State Initiatives

	Action Resulting in Ban	Percent of Voters Approving Initiative	Type of Amendment	Scope of Ban
California (1996)	Voter ballot initiative	54%	State constitution	Applies to all operations in public institutions of higher education
Washington (1998)	Voter ballot initiative	58%	State statute	Applies to all operations in public institutions of higher education
Florida (1999)	Executive order	N/A	Executive order/ regulation adopted by Board of Regents and approved by State Board of Education	Applies to admission in public institutions of higher education
Michigan (2006)	Voter ballot initiative	58%	State constitution	Applies to all operations in public institutions of higher education
Nebraska (2008)	Voter ballot initiative	58%	State constitution	Applies to all operations in public institutions of higher education

Key Action Steps

If building a diverse campus is important to your institution, the following actions may help to build public and political will to support your agenda:

- 1 Build broad-based coalitions to inform policy development and provide support, with the right leadership (higher education, business, military, government, etc.) advocating the educational, economic, civic, and security interests advanced by diverse student bodies.
- 2 Convey a common-sense description of what the research and experience show regarding the relative benefits and costs associated with diversity, with a focus on the benefits of diversity that inure to all individuals, as well as the rationale and need for considering race in certain cases when making admission and related decisions.
- 3 Pursue public education campaigns associated with the benefits of diversity, focusing on the importance of higher education institutions preserving their full array of policy options consistent with federal law when making mission-driven decisions that have major institutional, economic and societal consequences.

SELECTED RESOURCES

Coleman et al., *From Federal Law to State Voter Initiatives: Preserving Higher Education's Authority to Achieve the Educational, Economic, Civic, and Security Benefits Associated with a Diverse Student Body* (The College Board, 2007) at www.collegeboard.com/accessanddiversity (This policy paper significantly expands on the central points covered in this tool.)