

Pennsylvania May Primary Ballot Question 3

Prohibition Against Denial or Abridgment of Equality of Rights Because of Race or Ethnicity

Ballot Question

Shall the Pennsylvania Constitution be amended by adding a new section providing that equality of rights under the law shall not be denied or abridged because of an individual's race or ethnicity?

What this means (provided by LWVPA)

If you vote Yes, you agree that all levels of PA government, entities, and institutions be prohibited from discriminating against individuals because of their race or ethnicity.

If you vote No, you disagree with changing PA law since current state and federal laws, including the Pennsylvania Constitution and the Equal Protection Clause of the U.S. Constitution, already provide protections against discrimination by all levels of Pennsylvania government, entities, and institutions.

Background on proposed amendment: This constitutional amendment was introduced in the wake of police brutality cases and protests as an amendment to a different constitutional amendment bill to restrict a Governor's emergency declaration powers (See Ballot Question 1).

Article 1, Section 26, of the Pennsylvania Constitution currently prohibits discrimination by the Pennsylvania government "against any person in the exercise of any civil right." This proposed amendment focuses on protecting individuals from racial and ethnic discrimination by Pennsylvania governmental entities. The PA Constitution and federal laws, such as the Equal Protection Clause, provide broad protections against discrimination. However, this amendment focuses on prohibiting discrimination against the individual under PA law solely for race and ethnicity.

This is a state-specific change separate from federal law (Fourteenth Amendment). If passed, this law could add opportunity to bring "reverse discrimination" cases. Thus, if a Caucasian person felt they were discriminated against by a State-run operation or agency in hiring, admissions, or denied opportunities, they could sue under this new law.

The language of this amendment does not outright ban racial and ethnic considerations by all levels of Pennsylvania government, entities, and institutions. However, it could be construed that the specific prohibition against individual racial and ethnic discrimination could open the door to elimination, or the support of, race and ethnic-conscious considerations by State-run agencies or operations for under-represented groups under Pennsylvania Law. Any interpretation of this law would be decided by the Pennsylvania Supreme Court. However, if passed, any resulting consequences, good or bad, would likely be upheld because this is an amendment ballot question voted on by the Pennsylvania voters. In 2014, the U.S. Supreme Court upheld a Michigan ballot initiative which resulted in a ban on race considerations in state-run schools because the case was not about the merits of race-conscious policies.

Rather, as Justice Kennedy stressed in the controlling opinion, it is about "whether, and in what manner, voters in the States may choose to prohibit the consideration of racial preferences in governmental decisions..."

Arguments FOR:

- Promotes states' rights - independent of the US Constitution and federal laws
- Specifies the prohibition against individual racial and ethnic discrimination under PA law
- Could eliminate preferential treatment to under-represented groups by all levels of PA government, entities, and institutions
- Prohibits future legislation that is inconsistent with this law on protecting individuals from racial and ethnic discrimination by all levels of PA government, entities, and institutions

Arguments AGAINST:

- Adds opportunities to bring "reverse discrimination" cases (i.e., a Caucasian can claim race discrimination by all levels of PA government, entities, and institutions)
- Provides potential opportunity for all levels of PA government, entities, and institutions to no longer consider race and ethnicity in hiring, admissions, contracting, and access to other opportunities
- Existing law in the PA Constitution already forbids discrimination "against any person in the exercise of any civil right."