

# EQUAL MEASURES

## Is the U.S. Constitution color-blind?

*No State shall...deny to any person within its jurisdiction the equal protection of the laws.*  
—14th Amendment

In the November 2008 elections, voters in Colorado became the first to reject a ballot measure that would ban affirmative action programs in their state. A similar measure proposed in Nebraska passed on the same day with 58% approval. Both of these cases are only the latest in a debate over affirmative action that has been taken up across the country since California first passed a ban in 1996, followed by measures in Washington State in 1998 and Michigan in 2006.

Issues of race and race relations have always been a constitutional dilemma. The Constitution of 1787 protected slavery—our nation’s original sin. In the centuries since—through Civil War, Jim Crow segregation, the Civil Rights era and

beyond—constitutional debates about race and equality have shaped the nation, and changed our Constitution.



Writing in 1896, Justice John Marshall Harlan observed: “Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.” Today debates over affirmative-action and equal opportunity still center on whether the Constitution tolerates distinctions on the basis of color. Believers in a color-blind Constitution say it does not. They say affirmative action is wrong because it treats people unequally.

Believers in a color-conscious Constitution support affirmative action. They say that until racism disappears from our society government may take race into account to guarantee equal opportunity.

## Is the U.S. Constitution color-blind?

### YES

- The Constitution demands that government treat people on the basis of individual merit, not as members of racial groups.
- The 14th Amendment should be interpreted to prohibit any and all discrimination, against racial minorities and whites alike.
- It’s not fair to penalize people who themselves have committed no acts of discrimination for the past discrimination of others.

### NO

- The Constitution demands that all people have a fair chance; sometimes that means government must make up for discrimination.
- The 14th Amendment should be interpreted to give special protection to African Americans and other racial minorities that have experienced discrimination.
- In a race-conscious society, taking account of race is necessary to promote diversity.