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# Initiative would bar state on diversity

## Law schools' preferences on admissions main target

By Howard Fischer

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PHOENIX — An initiative drive being launched this week will ask Arizona voters to constitutionally bar state and local governments from considering race, sex, color, ethnicity or national origin in employment, contracting and education.

State officials have said there are no preferences in hiring or contracting. But the situation is somewhat different at Arizona's two public law schools — a major target of the initiative — where the number of applicants far exceeds the spaces available.

The proposal is the work largely of Ward Connerly, a former member of the California Board of Regents. He convinced voters in his own state to adopt a similar measure in 1996, banning programs that use those factors to give preference to, or discriminate against, applicants. He now is taking that campaign to eight other states.

The papers will be filed this week with the Arizona Secretary of State's Office, said Max McPhail, executive director of Connerly's campaign here.

That will allow the Arizona Civil Rights Initiative to begin gathering the 230,047 signatures it needs by July 3 to put the measure on the 2008 ballot.

Connerly said the concept of diversity may be overrated.

He pointed to law schools that exist at largely black colleges like Howard University. "There isn't much diversity but they're turning out a pretty good product," he said.

He said law schools are using the term in a thinly disguised effort to get around the fact that courts have ruled they can't set quotas to remedy things like past discrimination.

Patricia White, dean of the Sandra Day O'Connor College of Law at Arizona State University, said minority status, by itself, won't get an applicant in a law-school door.

But she said her school looks beyond the easily quantifiable measures of grade-point averages and Law School Aptitude Test scores to factors like a person's background and work experience, letters of reference and each applicant's personal statement.

Toni Massaro, her counterpart at the University of Arizona's James E. Rogers College of Law, said LSAT scores at best do only moderately well

### Initiative text

Draft text of Arizona Civil Rights Initiative

(a) 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.

(b) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(c) Nothing in this section shall be interpreted as invalidating any court order or consent decree that is in force as of the effective date of this section.

(d) Nothing in this section shall be interpreted as prohibiting 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.

(e) For the purposes of this section, "state" shall include, but not necessarily be limited to, the state itself, any city, county, city and county, state and county, public university system, including the University of Arizona, Arizona State University, Northern Arizona

at predicting a student's performance in the first year of law school.

"But we over and over again see applications from people who have had life experiences where, if you look at the whole record, you say, 'You know what? I think this person is going to outperform just the numerical indicators,' " Massaro said.

Both schools get applications from people their review committees conclude immediately are qualified, while other applications are set aside.

It is with the remainder that admissions committees of faculty and staff members and students use more subjective criteria to figure out which of the requests for admission — 3,100 at ASU for 160 slots and up to 2,800 for 150 at UA — are granted.

"It's not a precise science," said White. Some of it just comes down to balance.

"It's a little like putting together a dinner party," she said. For example, she said age is a factor.

"You're not going to have a class that consists of very similar 23-year-olds who didn't leave Maricopa County," she said.

Where students grew up, whether they speak another language, their work experience and their economic, ethnic and racial backgrounds also matter.

"Law is an inherently social, society-accountable profession," said Massaro. "So it's important for us to have a student body that is diverse in a really broad sense of that term."

Massaro said these factors are important for not just the education of the particular student admitted but the rest of the class.

Consider, she suggested, teaching constitutional law to a class that includes an American Indian student from a reservation with different cultural and legal traditions. "It's a positive value that informs the class discussion," she said.

McPhail, who is running the Arizona petition drive, said diversity is a good thing. But he said it should come "not at the expense of where someone is being judged differently because of their race or their gender."

The U.S. Supreme Court has allowed law schools, in particular, to consider race in admissions, most recently in a 5-4 opinion written in 2003 by then-Justice Sandra Day O'Connor, who upheld the admission practices of the University of Michigan to gain diversity.

"The benefits are not theoretical but real," O'Connor wrote. "American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas and viewpoints."

The idea of relying on more than LSAT scores is endorsed by Daniel Bernstine, president of the Law School Admission Council, the organization that administers those tests.

Bernstine, a supporter of affirmative action at law schools, blamed much of the reliance on test scores on the desire of some law schools to score well in the annual rankings of U.S. News and World Report, which is heavily weighted on both LSAT scores and grades.

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University, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the state.

(f) 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 then-existing Arizona anti-discrimination law.

(g) 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 United States Constitution, the section shall be implemented to the maximum extent that that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

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