Assembly Constitutional Amendment No. 5

Introduced by Assembly Members Weber and Gipson
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(Coauthor: Senator Mitchell)
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Assembly Constitutional Amendment No. 5—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by repealing Section 31 of Article I thereof, relating to government preferences.

LEGISLATIVE COUNSEL’S DIGEST


The California Constitution, pursuant to provisions enacted by the initiative Proposition 209 in 1996, prohibits the state from discriminating against, or granting 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. The California Constitution defines the state for these purposes to include the state, any city, county, public university system, community college district, school district, special district, or any other political subdivision or governmental instrumentality of, or within, the state.
This measure would repeal these provisions. The measure would also make a statement of legislative findings in this regard.


WHEREAS, Equal opportunity is deeply rooted in the American ideals of fairness, justice, and equality. Programs to meet the goals of equal opportunity seek to realize these basic values. Equal opportunity not only helps individuals, but also helps communities in need and benefits our larger society. California’s equal opportunity program was upended by the passage of Proposition 209 in 1996; and

WHEREAS, Proposition 209, entitled the California Civil Rights Initiative, amended Article I of the California Constitution to prohibit race- and gender-conscious remedies to rectify the underutilization of women and people of color in public employment, as well as public contracting and education; and

WHEREAS, Proposition 209 invalidated a series of laws that had been enacted by the California Legislature over the 20 years prior to it that required state agencies to eliminate traditional patterns of segregation and exclusion in the workforce, to increase the representation of women and minorities in the state service by identifying jobs for which their employment was underrepresented due to discrimination, and to develop action plans to remedy such underrepresentation without effectuating quota systems; and

WHEREAS, Proposition 209 also overshadowed other landmark civil rights and antidiscrimination laws. In 1959, after a 37-year campaign by labor and civil rights groups, the Unruh Civil Rights Act was passed, which was the forerunner of the Civil Rights Act of 1964; and

WHEREAS, As a result of the passage of Proposition 209, women and people of color continue to face discrimination and disparity in opportunities to participate in numerous forms of association and work that are crucial to the development of talents and capabilities that enable people to contribute meaningfully to, and benefit from, the collective possibilities of national life; and

WHEREAS, The State of California has provided employment opportunities for people of color and women of all races. However, lingering, and even increasing, disparity still exists, particularly for Asian Americans, Pacific Islanders, Black Americans, Latino
Americans, *Native Americans*, and women, and should be rectified; and

WHEREAS, Proposition 209 has impeded California’s continuing interest in supporting the equal participation of women in the workforce and in public works projects, in addressing the historical and present manifestations of gender bias, and in promulgating policies to enforce antidiscrimination in the workplace and on public projects; and

WHEREAS, In the wake of Proposition 209, California saw stark workforce diversity reductions for people of color and women in public contracting and in public education. Studies show that more diverse workforces perform better financially and are significantly more productive and focused; and

WHEREAS, Since the passage of Proposition 209, the state’s minority-owned and women-owned business enterprise programs have been decimated. A 2016 study conservatively estimates that the implementation of Proposition 209 cost women and people of color over $1,000,000,000 annually in lost contract awards. Most procurement and subcontracting processes remain effectively closed to these groups due to the changes brought on by Proposition 209; and

WHEREAS, Women are vastly underrepresented among firms receiving public contracts and the dollars awarded to certified women-owned business enterprises fell by roughly 40 percent, compared to levels before Proposition 209. In addition, only one-third of certified minority business enterprises in California’s transportation construction industry are still in operation today, compared to 20 years ago; and

WHEREAS, Women, particularly women of color, continue to face unequal pay for equal work. White women are paid 80 cents to every dollar paid to white men doing the same work. Black women are paid 60 cents for every dollar paid to white men doing the same work and would theoretically have to work an extra seven months every year to overcome that differential. This persistent gender wage gap continues to harm women, their families, and communities; and

WHEREAS, Despite a booming economy with almost full employment, a persistent racial wealth gap remains rooted in income inequality. Improving minority access to educational and
labor market opportunity reduces the wealth gap and strengthens
the economy; and
WHEREAS, Proposition 209 has had a devastating impact on
minority equal opportunity and access to California’s publicly
funded institutions of higher education. This violates the spirit of
the California Master Plan for Higher Education by making it more
difficult for many students to obtain an affordable and accessible
high quality public education. While federal law allows schools
to use race as a factor when making admissions decisions,
California universities are prohibited by Proposition 209 from
engaging in targeted outreach and extra efforts to matriculate
high-performing minority students. This reduces the graduation
rates of students of color and, in turn, contributes to the diminution
of the “pipeline” of candidates of color for faculty positions; and
WHEREAS, Since the passage of Proposition 209, diversity
within public educational institutions has been stymied. Proposition
209 instigated a dramatic change in admissions policy at the
University of California, with underrepresented group enrollment
at the Berkeley and Los Angeles campuses of the University of
California immediately falling by more than 60 percent and
systemwide underrepresented group enrollment falling by at least
12 percent. Underrepresented group high school graduates faced
substantial long-term declines in educational and employment
outcomes as a result of these changes; and
WHEREAS, Among California high school graduates who apply
to the University of California, passage of Proposition 209 has led
to a decreased likelihood of earning a college degree within six
years, a decreased likelihood of ever earning a graduate degree,
and long-run declines in average wages and the likelihood of
earning high wages measured by California standards. The
University of California has never recovered the same level of
diversity that it had before the loss of affirmative action nearly 20
years ago, a level that, at the time, was widely considered to be
inadequate to meet the needs of the state and its young people
because it did not achieve parity with the state’s ethnic
demographics; and
WHEREAS, The importance of diversity in educational settings
cannot be overstated. The Supreme Court of the United States
outlined the benefits that arise from diversity, as follows, “the
destruction of stereotypes, the promotion of cross-racial
understanding, the preparation of a student body for an increasingly
diverse workforce and society, and the cultivation of a set of leaders
with legitimacy in the eyes of the citizenry”; and

WHEREAS, Federal courts continue to reaffirm the value of
diversity in favor of race conscious admissions, as exemplified by
United States District Judge Allison D. Burroughs who stated,
“race conscious admissions programs that survive strict scrutiny
have an important place in society and help ensure that colleges
and universities can offer a diverse atmosphere that fosters learning,
improves scholarship, and encourages mutual respect and
understanding. Further, Judge Burroughs recognized that there are
no race-neutral alternatives that would allow a university to achieve
an adequately diverse student body while still perpetuating its
standards for academic and other forms of excellence; and

WHEREAS, It is the intent of the Legislature that California
remedy discrimination against, and underrepresentation of, certain
disadvantaged groups in a manner consistent with the United States
Constitution and allow gender, racial, and ethnic diversity to be
considered among the factors used to decide college admissions
and hiring and contracting by government institutions; and

WHEREAS, It is further the intent of the Legislature that
California transcend a legacy of unequal treatment of marginalized
groups and promote fairness and equal citizenship by affording
the members of marginalized groups a fair and full opportunity to
be integrated into state public institutions that advance upward
mobility, pay equity, and racial wealth gap reduction; now,
therefore, be it

Resolved by the Assembly, the Senate concurring, That the
Legislature of the State of California at its 2019–20 Regular
Session commencing on the third day of December 2018,
two-thirds of the membership of each house concurring, hereby
proposes to the people of the State of California, that the
Constitution of the State be amended as follows:
That Section 31 of Article I thereof is repealed.

REVISIONS:
Heading—Lines 2 and 3.