

Date of Hearing: May 14, 2025

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

ACA 7 (Jackson) – As Amended May 7, 2025

Policy Committee:	Higher Education	Vote:	6 - 3
	Judiciary		9 - 3

Urgency: State Mandated Local Program: No Reimbursable: No

SUMMARY:

This measure, if approved by the voters, replaces “public education” with “higher education admissions and enrollment” for purposes of subdivision (a) of Section 31, of Article I of the California Constitution, regarding the state’s prohibition of discrimination and preferential treatment on the basis of race sex, color, ethnicity, or national origin.

FISCAL EFFECT:

- 1) One-time General Fund costs to the Secretary of State in the hundreds of thousands of dollars for printing and mailing costs to place the measure on the ballot in a statewide election. Actual costs may be higher or lower, depending on the length of required elements and the overall size of the ballot. Over the last three election cycles, the printing and mailing costs per page averaged around \$80,000.
- 2) Potential ongoing Proposition 98 General Fund cost pressures of an unknown but possibly significant amount, potentially in the tens of millions to hundreds of millions of dollars, for K-12 local educational agencies or the Legislature to enact policies and programs providing preferential treatment on the basis of race, sex, color, ethnicity, or national origin.

COMMENTS:

- 1) **Purpose.** According to the author:

ACA 7 seeks to provide clarity to existing legislation concerning Proposition 209, also known as Article I, Section 31 of the California Constitution. For too long, the provisions of this law have been subject to broad interpretation, leaving Californians without a clear understanding of its intended application. This measure introduces clarifying language and makes a modest adjustment to focus specifically on ‘higher education [admissions and] enrollment.’ These changes will help ensure a more accurate interpretation of the state constitution, allowing its provisions to be implemented as originally intended.

- 2) **Background. Proposition 209.** Enacted by the voters in 1996, Article I, Section 31 of the California Constitution, commonly known as Proposition 209, passed during the midst of a political reaction against “affirmative action” in the state and around the nation. Proposition

209 declared that 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.” The language prohibiting “discrimination” was largely superfluous, given that state and federal law, as well as the equal protection clause of the 14th Amendment, already prohibited such discrimination. What Proposition 209 accomplished, therefore, was a prohibition of “preferential treatment.” Although the measure did not define “preferential treatment,” the courts have held that it means “to give priority or advantage to one person . . . over others.” Essentially, this policy all but banned affirmative action outright.

This bill maintains the existing prohibition on affirmative action for college admissions, consistent with a recent decision by the U.S. Supreme Court, but it would authorize action for K-12 schools and, potentially, in any aspect of higher education other than admissions and enrollment.

Past efforts. SCA 5 (Hernández), of the 2013-14 Legislative Session, would have removed “public education” entirely from the Article I, Section 31, so that it only would have applied to public employment and public contracting. SCA passed off the Senate Floor but the Assembly desk eventually ordered it return to the Senate, where it died. In 2020, ACA 5 (Weber) of the 2019-20 Legislative Session, passed in both houses by large majorities and was added to the ballot as Proposition 16. This measure would have repealed Proposition 209 in its entirety, thereby authorizing the state to consider racial and gender diversity as a factor in public employment, public education, and public contracting. However, over 57% of the voters voted to reject Proposition 16. Notably, ACA 7 is much narrower than the two prior attempts and retains a prohibition consistent with a recent decision of the U.S. Supreme Court regarding college admissions. If passed by the Legislature, this bill would need to receive a majority vote by the California electorate to become law.

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