

ASSEMBLY THIRD READING  
ACA 7 (Jackson)  
As Amended May 7, 2025  
2/3 vote

## SUMMARY

Amends the California State Constitution, upon approval of the voters of California, to narrow the scope of the State's prohibition in granting preferential treatment on the basis of race, sex, color, ethnicity, or national origin to the areas of public employment, higher education admission and higher education enrollment, and public contracting.

### Major Provisions

- 1) Removes public education from the list of State operations which are prohibited from discriminating against or granting preferential treatment to, any individual or group, on the basis of race, sex, color, ethnicity, or national origin.
- 2) Adds "higher education admission and enrollment" to the list of State operations which are prohibited from discriminating against or granting preferential treatment to, any individual or group, on the basis of race, sex, color, ethnicity, or national origin.
- 3) States the prohibition on discrimination and the granting of preferential treatment shall only apply to actions of the State after the section's effective date and is limited to the areas of public employment, higher education admissions and enrollment, and public contracting.
- 4) Makes various technical and clarifying changes to the section of the California Constitution.

## COMMENTS

*Background on Proposition 209.* Heralded as the a first step in providing a free and equal society, the passing of the Civil Rights Act of 1964 was only one part of the Federal Government's approach to guaranteeing equal treatment for every American. In addition to the passing of the landmark act, President Lyndon Johnson issued Executive Order 11246 requiring the federal government to take affirmative action to address previously discriminatory practices in the hiring and employing of marginalized individuals underrepresented in public employment. Over the next few decades, Federal agencies and State governments introduced affirmative action policies to provide greater access to educational and employment opportunities for historically marginalized groups affected by systemic discrimination. Affirmative action initiatives are "any measure, beyond simple termination of a discriminatory practice, adopted to correct or compensate for past or present discrimination or to prevent discrimination from recurring in the future."

Over the next few decades various court cases including *Regents of University of California v. Bakke* (1978) 438 U.S. 265, challenged the scope of affirmative action initiatives and the public discord became politically charged with many believing affirmative action was "reverse discrimination." In the wake of growing concern around the correlation between affirmative action and discrimination, the University of California (UC) Board of Regents passed the country's first affirmative action ban in 1995, ending the practice of using race, religion, sex, color, ethnicity, or national origin as a criterion in admissions, contracting, and hiring practices at the UC. In the wake of the UC decision, California became the first state to place a proposition

on the ballot to create a "prohibition against discrimination or preferential treatment by the state and other public entities."

According to the Legislative Analyst's Office, Proposition 209 would "eliminate state and local government affirmative action programs in the areas of public employment, public education, and public contracting to the extent these programs involve 'preferential treatment' based on race, sex, color, ethnicity, or national origin." In higher education, the proposition would impact a variety of assistance programs for students, faculty and staff that provided targeted assistance to individuals based on individuals. These targeted programs included specialized tutoring, financial aid, outreach, and counseling.

In November 1996, Proposition 209 passed with a majority voting (54.55%) in favor of the constitutional amendment. In the intervening years, a myriad studies reported the outcomes Proposition 209 had on public contracting, public employment, and public education. In 2008, the Thelton E. Henderson Center for Social Justice published a report entitled, "Proposition 209 and Public Employment in California Trends in Workforce Diversity," which determined:

"the State of California has provided employment opportunities for people of color and women of all races. However lingering and even increased disparity still exists, particularly for Latino Americans and women, and should be rectified."

Research on college admissions showed an almost immediate disproportionality in the admission of minority students to the UC. However, it is unclear if this disparity can solely be attributed to the impact of Proposition 209 on admissions, as there is a "substantial difference in the share of high school students completing the college preparatory courses required for UC admission."

In January 2015, a study conducted by Equal Justice Society, found Proposition 209 resulted in an annual loss of \$1 billion in revenue for minority and women business enterprises due to the end of race-conscious contracting programs.

Since 1996, there have been four legislative attempts to either repeal or reduce the scope of Proposition 209 on public contracting, public education, and public employment. Of the four attempts only one has made it onto the ballot. In 2020, ACA 5 (Weber), Chapter 23, Statutes of 2020 or Proposition 16 sought to repeal the provisions of Proposition 209. Proposition 16 failed with the majority of Californians voting to uphold the existing ban on discrimination and preferential treatment in State operations of public employment, public contracting, and public education.

*ACA 7 implications on public education.* ACA 7 (Jackson) would provide an opportunity for voters to re-examine the scope of Proposition 209 and to align the California Constitutional Article with a recent U.S. Supreme Court decision on collegiate admissions. In 2023, the U.S. Supreme Court determined the admissions programs at Harvard College and the University of North Carolina violated the equal protections clause of the 14<sup>th</sup> Amendment of the U.S. Constitution when colleges considered race as a criterion in admission decisions. The decision effectively ended affirmative action in admissions across the United States; except for in California, where Proposition 209 already prohibited the public university system from using race as a criteria for admissions.

Currently, Proposition 209 applies to more than just admissions and enrollment in higher education. The prohibition on discriminatory practices and preferential treatment based on race,

sex, color, ethnicity, or national origin includes every aspect of higher education operations funded by the State. Since the enactment of Proposition 209, public higher education institutions have sought to comply while also providing for a diverse student population through the creation of diversity, equity, and inclusion programs. Examples of diversity, equity, and inclusion program programs created to encourage a diverse student population include: Umoja, Puente, the Asian American, Native Hawaiian, and Pacific Islander Student Achievement Program, and the Native American Student Support and Success Program. Each of these programs receive state funds and provide additional supports to marginalized student groups; however, these programs are not perceived as violating Proposition 209 as the programs are not exclusionary in who they support. Additionally, admission officers at the California State University (CSU) and UC have also practiced applying diversity, equity, and inclusionary practices to admissions in order to avoid Proposition 209 violations. Both university systems have adopted a holistic approach, which considers the applicants full history taking into account systemic barriers a student may have encountered and overcome.

ACA 7 (Jackson) removes public education from the list of State operations expressly prohibited by the California Constitution from discriminating against or providing preferential treatment based on certain characteristics; however, it would not remove the legal obligation for public education entities to comply with State and Federal Civil Rights Laws. Proposition 209 is not an isolated law in its prohibition against discriminatory practices. Even if, ACA 7 (Jackson) were to pass the Legislature and the voters of California were to affirm the language, the measure would not result in discriminatory practices or preferential treatment for individuals based on race, sex, gender, ethnicity, or national origin in the operations of public education. Nor would the measure result in the return of affirmative action programs to K-12 local education agencies or public higher education agencies.

Please see the policy committee's analysis for a full discussion of this bill.

### **According to the Author**

As described by 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 enrollment.' These changes will help ensure a more accurate interpretation of the state constitution, allowing its provisions to be implemented as originally intended."

### **Arguments in Support**

As stated by EdTrust – West, "this measure would amend the California constitution to permit use of race in public education policy, excluding higher education enrollment. As explained in our recent publication "Black Minds Matter," (Black Minds Matter: Building Bright Black Futures) research and data on public education show significant racial disparities in opportunity and achievement. In many cases, these disparities are rooted in race. ACA 7 recognizes this and would permit targeted, research-based interventions that improve educational outcomes. Without ACA 7, we'll continue to struggle to close opportunity and achievement gaps as no effective proxy for race has been found to target educational interventions and resources."

### **Arguments in Opposition**

As stated by the Pacific Legal Foundation, "While ACA 7 preserves the prohibition on discrimination in higher education enrollment, it will permit the government to discriminate in all aspects of K-12 education and all other aspects pertaining to colleges and universities. This uneven and inconsistent preservation of equality and opportunity fails to fully live up to the guarantee of the equal protection of the laws under the Fourteenth Amendment to the United States Constitution. Adherence to the Fourteenth Amendment mandates that '[e]liminating racial discrimination means eliminating all of it.' It is thus insufficient under our constitution that government cannot discriminate in higher education enrollment but can discriminate everywhere else. Opposing ACA 7 will uphold the promise of equality that Proposition 209 protects. Since the passage of Proposition 209, Californians have consistently given strong support to the constitutional prohibition on racial preferences and discrimination. In 2020, Californians defeated Proposition 16 in a landslide, rejecting an amendment to repeal Proposition 209. And in 2024, an attempt to permit broad exceptions to Proposition 209 was unsuccessful when the Legislature failed to pass ACA 7."

### **FISCAL COMMENTS**

According to the Assembly Committee on Appropriations:

- 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.

### **VOTES**

#### **ASM HIGHER EDUCATION: 6-3-1**

**YES:** Fong, Boerner, Jackson, Muratsuchi, Celeste Rodriguez, Sharp-Collins

**NO:** DeMaio, Jeff Gonzalez, Tangipa

**ABS, ABST OR NV:** Patel

#### **ASM JUDICIARY: 9-3-0**

**YES:** Kalra, Bauer-Kahan, Bryan, Connolly, Harabedian, Pacheco, Papan, Stefani, Zbur

**NO:** Dixon, Macedo, Sanchez

#### **ASM APPROPRIATIONS: 11-4-0**

**YES:** Wicks, Stefani, Calderon, Caloza, Fong, Mark González, Krell, Bauer-Kahan, Pacheco, Pellerin, Solache

**NO:** Hoover, Dixon, Ta, Tangipa

**UPDATED**

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CONSULTANT: Ellen Cesaretti-Monroy / HIGHER ED. / (916) 319-3960

FN: 0002249