
SENATE COMMITTEE ON EDUCATION

Senator Sasha Renée Pérez, Chair

2025 - 2026 Regular

Bill No: ACA 7 **Hearing Date:** June 3, 2026
Author: Jackson
Version: May 7, 2025
Urgency: **Fiscal:** Yes
Consultant: Olgalilia Ramirez

Subject: Government preferences.

Note: This bill has been referred to the Committees on Education and *Elections and Constitutional Amendments*. A “do pass” motion should include referral to the Committee on *Elections and Constitutional Amendments*.

SUMMARY

This measure amends the California State Constitution, upon approval of the voters of California, by replacing “public education” with “higher education admissions and enrollment” in subdivision (a) Section 31, of Article I, which prohibits discrimination and preferential treatment on the basis of race, sex, color, ethnicity, or national origin.

BACKGROUND

United States Constitution:

- 1) Declares all people born or naturalized in the United States are citizens of the United States and are citizens of the state where they reside. Prohibits any state from making or enforcing any law that abridges the privileges or immunities of citizens of the United States. Prohibits any state from depriving any person of life, liberty, or property, without due process of law. Prohibits any state from denying any person within its jurisdiction the equal protection of the law. (United States Constitution (USC), Amendment 14, the Equal Protection Clause)

Federal law:

- 2) No person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance except for specified circumstances, including membership of fraternities and sororities. (20 USC 1681-168 Title IX)
- 3) Prohibits discrimination on the basis of race, color, or/and national origin in programs and activities receiving federal assistance. (42 USC 2000d et seq., Title VI of the Civil Rights Act of 1964)
- 4) Prohibits discrimination in employment based on race, color, religion, sex, or national origin and prohibits retaliation against employees who invoke their rights

under Title VII of the Civil Rights Act of 1964. (42 USC 2000e Title VII of the Civil Rights Act)

California State Constitution:

- 5) States that a person is not to be deprived of life, liberty, or property without due process of law or denied equal protection of the laws. (Section 7 of Article 1 of the California State Constitution)
- 6) Prohibits the State, in the operation of public employment, public education, or public contracting, from discriminating against or granting preferential treatment to any individual or any group on the basis of race, sex, color, ethnicity, or national origin. States the implementation is to comply with federal laws and the USC and defines the “state” to include the public university system (including the University of California (UC)). Nothing in the aforementioned clause is to be interpreted as:
 - a) Prohibiting bona fide qualifications based on sex, which are reasonably necessary to the normal operation of public employment, public education, or public contracting.
 - b) Prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State.
 - c) Invalidating any court order or consent decree, which is in force as of the effective date of the section. (Section 31 of Article 1 of the California State Constitution (Proposition 209))

State law:

- 7) Establishes the Donahoe Higher Education Act, setting forth the mission of the UC, California State University (CSU), and California Community Colleges (CCC); and, defines “independent institutions of higher education” as nonpublic higher education institutions that grant undergraduate degrees, graduate degrees, or both, and that are formed as nonprofit corporations in California and are accredited by an agency recognized by the United States Department of Education. (Education Code (EC) Section 66010, et seq.)
- 8) States that no person is to be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any characteristic listed or defined in Section 11135 of the Government Code or any other characteristic that is contained in the prohibition of hate crimes, as defined in subdivision (a) of Section 422.6 of the Penal Code, including immigration status. States the prohibition on the discrimination on the basis of the listed characteristics is extended to programs or activities conducted by any postsecondary education institution that receives or benefits from, state financial assistance or enrolls students who receive state financial aid. (EC § 66270)

- 9) States that no person is to be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid. (EC § 220)

ANALYSIS

- 1) This measure amends the California State Constitution, upon approval of the voters of California, by replacing “public education” with “higher education admissions and enrollment” in subdivision (a) Section 31, of Article I, which prohibits discrimination and preferential treatment on the basis of race, sex, color, ethnicity, or national origin. Specifically, it:
 - a) Removes “*public education*” from the list of activities 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.
 - b) Adds “*higher education admission and enrollment*” to the list of activities 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.
 - c) States that the prohibition on discrimination and the granting of preferential treatment only apply to actions of the State after the section’s effective date and is limited to the areas of public employment, higher education admission and enrollment, and public contracting.
 - d) Makes various technical and clarifying changes.

STAFF COMMENTS

- 1) **Need for the bill.** 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 an 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) **Proposition 209.** Proposition 209, approved by voters in 1996, added Article 1, Section 31 to the California Constitution, prohibiting discrimination against or granting preferential treatment to individuals or groups on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, and public contracting. Proposition 209 did not replace broader anti-discrimination

protections, as state and federal constitutional equal protection guarantees and other civil rights laws continue to apply independently (outlined in the background section of this analysis). Seemingly, Proposition 209 serves as an additional constitutional limitation rather than the sole source of anti-discrimination protection. As noted in the Assembly Judiciary Committee analysis, “the language prohibiting discrimination was largely superfluous, given that the state and federal law as well as the equal protection clause of 14th Amendment, already prohibited such discrimination. What Proposition 209 effectively did was to prohibit preferential treatment which is generally understood to mean either setting quotas or, considering race as a one factor among many in someone’s qualification.

Proposition 209 restricted affirmative action programs involving preferential treatment in the prescribed areas. According to the Legislative Analyst’s Office (LAO) in their review of Proposition 16 in 2020, prior to Proposition 209, state and local entities had policies and programs intended to increase opportunities and representation for people who faced inequalities as a result of their race, sex, color, ethnicity, or national origin. After the adoption of Proposition 209, for higher education, this meant public colleges and universities could no longer consider those characteristics in admission decisions or operate certain programs specifically designed to increase access, representation, or support for historically underrepresented student groups. After voters approved Proposition 209, some public universities created or modified policies and programs to instead consider characteristics not banned by Proposition 209.

3) **Related Supreme Court decisions.**

- a) *University of California v. Bakke*. In 1978, the Supreme Court ruled that a state may constitutionally consider race as a factor in its university admissions to promote educational diversity, but only if considered alongside other factors and on a case-by-case basis. The Court ruled, however, that California’s use of racial quotas in this case, did not meet those requirements and violated the Constitution’s Equal Protection Clause. The Court also ruled that the state has a legitimate and substantial interest in eliminating the disabling effects of identified discrimination.
- b) *Gratz v. Bollinger*. In 2003, the Supreme Court ruled that the University of Michigan’s undergraduate admissions policy, which automatically distributed one -fifth of the points needed to guarantee admission to every single “underrepresented minority” applicant, was not narrowly tailored to achieve the University’s asserted interest in diversity and did violate the Equal Protection Clause.
- c) *Grutter v. Bollinger*. In June 2003, the US Supreme Court ruled that the Equal Protection Clause does not prohibit the University of Michigan Law School’s “narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body.”

- d) *Fisher vs. University of Texas at Austin (2016)*. The US Supreme Court upheld the University of Texas's admissions policy, holding that a public university may consider race as one factor in admissions if the policy withstands strict scrutiny and is narrowly tailored to achieve the educational benefits of diversity. It held that the race-conscious admission program in use at the time of application is lawful under the Equal Protection Clause.
 - e) *Students for Fair Admissions, Inc, v, President and Fellows of Harvard College*. The US Supreme Court subsequently revisited the issue of race conscious admissions in 2023. The Supreme Court issued a decision addressing the use of race based admission policies in higher education. The US Supreme Court held that the consideration of an applicant's race as one factor in making an admission decision is unconstitutional violating the Equal Protection Clause of the 14th Amendment.
- 4) **Related ballot measure.** In 2020, the Legislature approved ACA 5 (Weber, Chapter 23, Statutes of 2020), which asked voters for full repeal of Proposition 209. ACA 5 was placed before California voters as Proposition 16 on the November 3, 2020, statewide general election ballot, where it failed passage with 57 percent of voters voting NO. The LAO noted in its fiscal analysis of the ballot measure, that it would have no direct fiscal effect on state and local entities because the measure would not require any change to current policies or programs. Instead, any fiscal effects would depend on future choices by state and local entities to implement policies or programs that consider race, sex, color, ethnicity, or national origin in public education, public employment, and public contracting.

This measure, ACA 7, proposes a more targeted change to Proposition 209, limiting its application in public education to higher education admission and enrollment, thereby removing other K-12 and higher education activities from its scope.

According to the Assembly Judiciary Committee Analysis, "While leaving "higher education admissions and enrollment" in Article I, Section 31 is consistent with existing case law, it remains to be seen whether policies permitted under this proposed constitutional provision would violate the equal protection clause of the 14th Amendment. To be clear, this measure would not – indeed, could not – by itself violate the equal protection clause; because it does not by itself discriminate against, or grant a preference to, any individual or group. It simply declares what the state cannot do; it does not say what it can or must do. The opponents of this measure, therefore, are apparently concerned that this proposed change in the state constitution might permit policies that violate the equal protection clause. If the intent of the measure is to permit K-12 to discriminate on the basis of race, or permit colleges and universities to discriminate on the basis of race in everything other than admissions and enrollment, those policies might pass constitutional muster under the state constitution, as revised, but those policies might still violate the equal protection clause of the 14th Amendment, at least as interpreted by the U.S. Supreme Court in *Students for Fair Admissions*."

- 5) **Arguments in support.** As stated by EdTrust – West in their letter submitted to this committee, “This measure represents a critical step toward ensuring that California can finally address long-standing inequities in TK-12 public education and design race-conscious policies to close persistent achievement gaps. EdTrust-West’s Black Minds Matter: Building Bright Black Futures report highlights the severity of these disparities: Black students continue to face stark academic disparities, with only 3 in 10 meeting grade-level English language arts standards and math proficiency declining from 28% in third grade to just 16% by eleventh grade. Without meaningful policy change, these inequities will persist for generations. At the current pace, some estimates suggest that it will take until 2070 for all Black students to reach proficiency in reading and until 2089 for all Black students to reach proficiency in math, illustrating the profound limitations of race-neutral approaches that have failed to produce the progress students deserve. The inability to target the needs of students of color due to Prop 209’s restrictions on race-conscious policymaking has prevented California from closing racial equity gaps in educational outcomes. These gaps carry real consequences for graduation rates, college access, economic mobility, and long-term outcomes. ACA 7 directly responds to this longstanding barrier by allowing policy-makers to craft targeted, evidence-based interventions to address documented inequities that race-neutral policies alone have failed to address.”
- 6) **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.”
- 7) **Prior legislation.**
- ACA 5 (Weber, Chapter 23, Statutes of 2020) a constitutional amendment asked the voters of California to vote on repealing Proposition 209, thereby permitting the use of race, gender, and ethnic diversity as factors in college admissions, government hiring, and government contracting. ACA 5 was placed before California voters as Proposition 16 on the November 3, 2020, statewide general election ballot, where it failed passage with 57 percent of voters voting NO.
- SCA 5 (Hernández, 2013) would have asked the voters if Proposition 209 should be amended to permit the use of gender and race in UC and public school admissions. The measure was held by the Senate Desk.

SB 185 (Hernandez, 2011) stated the Legislature's intent to authorize the CSU and the UC to consider race, gender, ethnicity and national origin, geographic origin, and household income, along with other relevant factors, in undergraduate and graduate admissions, as specified, and required the CSU and requested the UC to report on the implementation of these provisions to the Legislature and Governor by November 1, 2013, as specified. SB 185 was vetoed by the Governor, whose veto message read:

"I wholeheartedly agree with the goal of this legislation. Proposition 209 should be interpreted to allow UC and CSU to consider race and other relevant factors in their admissions policies to the extent permitted under the Fourteenth Amendment of the United States Constitution. In fact, I have submitted briefs in my capacities as both Governor and Attorney General strongly urging the courts to adopt such an interpretation.

"But while I agree with the goal of this legislation, I must return the bill without my signature. Our constitutional system of separation of powers requires that the courts -- not the Legislature -- determine the limits of Proposition 209. Indeed, there is already a court case pending in the 9th Circuit against the State and the UC on the same issues addressed in this bill. Signing this bill is unlikely to impact how Proposition 209 is ultimately interpreted by the courts; it will just encourage the 209 advocates to file more costly and confusing lawsuits."

AB 2047 (Hernandez, 2010) would have authorized the CSU and the UC to consider geographic origin, household income, race, gender, ethnicity and national origin along with other relevant factors, in undergraduate and graduate admissions, and required and requested the CSU and UC, respectively, to report on the implementation of these provisions to the Legislature and Governor by November 1, 2012, as specified. AB 2047 was ultimately vetoed by the Governor, whose veto message read, in pertinent part:

"The UC and CSU systems are aware of and supportive of the important goal of student diversity and make every attempt through its comprehensive review admissions process. That process considers many of the factors contained in this legislation, but do so within current constitutional restrictions. The intent of this bill would be more appropriately addressed through a constitutional change of those current restrictions."

ACA 23 (Hernandez, 2009) would have exempted public education institutions from the constitutional prohibitions established by Proposition 209 for the purposes of implementing student recruitment and selection programs at public postsecondary education institutions. The proposed constitutional amendment passed the Assembly Higher Education Committee by a vote of 6-1 in July 2009 and was referred to the Assembly Judiciary Committee, but was never heard.

AB 2387 (Firebaugh, 2004) would have authorized the UC and the CSU to consider culture, race, gender, ethnicity, national origin, geographic origin, and household income, along with other relevant factors, as specified, in undergraduate and graduate admissions, so long as no preference is given. AB 2387 was vetoed by the Governor, whose veto message read, in pertinent part:

“The practical implementation of the provisions of this bill would be contrary to the expressed will of the people who voted to approve Proposition 209 in 1996. Therefore, since the provisions of this bill would likely be ruled as unconstitutional, they would be more appropriately addressed through a change to the State Constitution.”

SUPPORT

A2MEND

Advanced Consulting, LLC
Berkeley Reparations Coalition
Black Educator Advocates Network
Black Parallel School Board
Black Students of California United
BLU Educational Foundation
Bulletproof Group
Californians for Justice
Californians Together
Canal Alliance
Center for Black Educator Development
Central Valley Movement Building Organizing Institute
Children Now
Chinese for Affirmative Action
Community Schools Learning Exchange
Congregations Organized for Prophetic Engagement
EdTrust-West
EdVoice
Grand Performances
Innecity Struggle
Island Grad and SBCUSD Pasifika Program
Los Angeles Urban Foundation
National Equity Project
Northern California College Promise Coalition
Parent Engagement Academy
Prismatic Research & Strategy
Public Advocates
Southeast Asia Resource Action Center
Southern California Pacific Islander Community Response Team
Students Rising Above
Teach Plus California
The Village Method
United Parents and Students
Watts of Power Foundation
Young Invincibles

OPPOSITION

Californians for Equal Rights Foundation
Elk Grove Chinese Association
Equal Rights for All Pac
San Diego Asian Americans for Equality
The American Civil Rights Project
Several Individuals

-- END --