
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Scott Wiener, Chair
2025 - 2026 Regular

Bill No: ACA 7 **Hearing Date:** 6/9/26
Author: Jackson
Version: 5/26/26 Amended
Urgency: **Fiscal:** Yes
Consultant: Carrie Cornwell

Subject: Government preferences.

DIGEST

This proposed constitutional amendment would, if approved by the voters, amend the California Constitution to narrow the scope of the State’s prohibition in granting preferential treatment on the basis of race, sex, color, ethnicity, or national origin as to exempt public education, except for higher education admissions and enrollment.

ANALYSIS

Existing law, contained in Section 31 of Article I of the California Constitution prohibits the State of California 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.”

This measure asks the people of the State of California at the November 7, 2028, statewide general election ballot to amend Section 31 of Article I of the California Constitution to replace “public education” with “higher education admissions and enrollment.” The measure would also make other conforming and technical changes.

BACKGROUND

Proposition 209. Growing out of the backlash to affirmative action policies, Proposition 209 of 1996, an initiative, added Section 31 of Article I to the California Constitution. It was the first electoral test of affirmative action policies in the United States, and its passage inspired similar measures in other states.

The language of Proposition 209 prohibits the State of California 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.”

In the years since its passage, there have been several attempts to amend it or repeal it from the California Constitution. In 2013-14 session, SCA 5 (Hernández) would have removed “public education” entirely from Section 31 of Article I, so it only would have applied to public employment and public contracting. SCA 5 passed off the Senate Floor but was held at the Assembly Desk before it was eventually ordered to return to the Senate.

In 2020, ACA 5 (Weber) would have repealed Proposition 209 in its entirety. ACA 5 passed in both houses by large majorities and became Proposition 16 on the November 2020 ballot. The voters rejected Proposition 16 with 43 percent voting for it and 57 percent voting against it.

COMMENTS

- 1) Author's Statement. This proposed constitutional amendment 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) Proposed for the 2028 Ballot. This measure includes language placing the proposed constitutional amendment on the November 2028 statewide general election ballot. Currently no ballot measures are set to appear on that ballot. The author has indicated that placing the measure on the statewide general election ballot in 2028 will provide greater time to educate voters on this measure than if it were rushed on to this November's ballot.
- 3) Not Exactly Relevant Court Cases. Parallel to the legislative efforts relating to affirmative action policies, a number of well-known judicial decisions occurred. The latest of which constitutes the current law in the U.S. These court decisions relate to the admissions process at highly selective elite universities, including those in the Ivy League and the University of California and include:
 - 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
 - b) *Students for Fair Admissions, Inc, v, President and Fellows of Harvard College*. The U.S., Supreme Court revisited the issue of race conscious admissions in 2023, when the court held that the consideration of an applicant's race as one factor in making an admission decision is unconstitutional.
- 4) The Achievement Gap. Proponents of the measure argue that it is needed to ensure the availability of educational programs aimed at populations delineated by race, national origin, or other classes and intended to reduce the achievement gap between those groups and white or higher income students. They contend that school districts and public entities are reluctant to offer such targeted programs because of the belief that these programs will run afoul of Proposition 209's prohibitions. Their intent is to make such programs clearly legal under the California Constitution in an effort to close the achievement gap. Opponents, however, assert

the changes to Proposition 209 the measure makes would increase ambiguity about what would constitute legally allowed programmatic offerings.

- 5) Arguments in Support. A broad coalition of justice, equity, and educational organizations write in support of the measure:

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. [This measure] 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.

Without [this measure], the state will continue to rely on ineffective proxies for race, limiting its ability to design effective educational interventions and allocate resources in ways that meaningfully advance equity.

- 6) Arguments in Opposition. In its letter urging the Legislature not to advance this measure to the ballot, the San Diego Asian Americans for Equality state, "Racial preferences enacted by the government are deeply unpopular among your electorate and among all Californians." Other opponents share similar sentiments and further note that they opposed previous efforts to repeal or amend Proposition 209 and will do so again, including this measure if it appears on the ballot.

Noting that adoption of this measure would mean "K-12 policy, grant programs, state benefits, scholarship programs, and other government actions would no longer be constitutionally barred from race- or sex-based preferences," the California Family Council states in its letter of opposition:

By narrowing the scope of Proposition 209's protections, the amendment creates ambiguity and potential litigation over which programs may now incorporate race- or sex-based considerations. Rather than providing clarity, it weakens the constitutional guardrails that voters deliberately put in place.

- 7) Double referral. This measure was referred to both the Committee on Education and this committee. The Committee on Education passed the measure by a vote of 5 -2 on June 3, 2026.

RELATED/PRIOR LEGISLATION

SCA 5 (Hernández), of the 2013-14 Legislative Session, would have removed "public education" entirely from Section 31 of Article I, so that it only would have applied to public employment and public contracting. SCA 5 passed off the Senate Floor but the Assembly Desk eventually ordered its return to the Senate, where it died.

ACA 5 (Weber), Resolution Chapter 23, Statutes of 2020, asked the voters of California to vote to repeal Section 31 of Article I of the California Constitution and thus permit the use of race, gender, and ethnic diversity as factors in college admissions, government

hiring, and government contracting. The measure became Proposition 16 on the November 2020 statewide general election ballot, which failed passage.

PRIOR ACTION

Assembly Floor:	54 - 14
Assembly Appropriations Committee:	11 - 4
Assembly Judiciary:	9 - 3
Assembly Higher Education Committee:	6 - 3

POSITIONS

Sponsor: Author

- 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
Partnership for Los Angeles Schools
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

United Way of Greater Los Angeles
Watts of Power Foundation
Young Invincibles

Oppose: California Family Council
Californians for Equal Rights Foundation
Center for Equal Opportunity
Elk Grove Chinese Association
Equal Rights for All Pac
San Diego Asian Americans for Equality
The American Civil Rights Project
Seven individuals

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