
THIRD READING

Bill No: ACA 7
Author: Jackson (D), et al.
Amended: 8/13/26 in Senate
Vote: 27

SENATE EDUCATION COMMITTEE: 5-2, 6/3/26
AYES: Pérez, Cabaldon, Cortese, Gonzalez, Reyes
NOES: Ochoa Bogh, Choi

SENATE ELECTIONS & C.A. COMMITTEE: 4-1, 6/9/26
AYES: Wiener, Allen, Cervantes, Umberg
NOES: Choi

SENATE APPROPRIATIONS COMMITTEE: 4-2, 8/13/26
AYES: Cervantes, Cabaldon, Grayson, Richardson
NOES: Seyarto, Dahle
NO VOTE RECORDED: Wahab

ASSEMBLY FLOOR: 54-14, 2/19/26 - See last page for vote

SUBJECT: Government preferences

SOURCE: Author

DIGEST: This Constitutional Amendment, if approved by voters, would amend the California Constitution to replace “public education” with “public 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. The measure requires that it appear on the statewide general election ballot on November 7, 2028.

ANALYSIS:

Existing law pursuant to the 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)

Existing 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)

Existing law, pursuant to the 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))

Existing 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)

This measure:

- 1) Amends the California State Constitution, upon approval of the voters of California, by replacing “public education” with “public 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 “*public 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) Requires that the measure appear on the ballot at the November 7, 2028 statewide general election.
 - e) Makes various legislative findings and declarations regarding racial equity gaps.
 - f) Makes various technical and clarifying changes.

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 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 public 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*.”

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee analysis, this bill would have the following fiscal impact:

- This bill could result in additional, unknown Proposition 98 General Fund cost pressures for the state or K-12 local educational agencies (LEAs) to enact policies and programs providing preferential treatment on the basis of race, sex, color, ethnicity, or national origin. However, these costs are difficult to quantify because the bill does not necessarily require any changes to current policies or programs. The exact costs would depend on any decisions that are made by the state or LEAs with respect to the

implementation of policies or programs that consider race, sex, color, ethnicity, or national origin.

- This measure would result in one-time General Fund costs to the Secretary of State (SOS) in the range of \$738,000 to \$984,000, likely in 2028-29, 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.

SUPPORT: (Verified 8/15/26)

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

CCHALES Research Collective

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

Hispanas Organized for Political Equality

Immigrants Rising

Innecity Struggle

Island Grad and SBCUSD Pasifika Program

KHK Solutions LLC

Little Manila Rising

Los Angeles Urban Foundation

Mission Graduates

National Equity Project

Northern California College Promise Coalition
Parent Engagement Academy
Partnership for Los Angeles Schools
Prismatic Research & Strategy
Public Advocates
SoCal Pacific Islander Community Response Team
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

OPPOSITION: (Verified 8/15/26)

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

ASSEMBLY FLOOR: 54-14, 2/19/26

AYES: Aguiar-Curry, Ahrens, Alvarez, Arambula, Ávila Farías, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Michelle Rodriguez, Rogers, Blanca Rubio, Schultz, Sharp-Collins, Solache, Soria, Stefani, Valencia, Ward, Wicks, Wilson, Zbur, Rivas
NOES: Castillo, Chen, Davies, DeMaio, Jeff Gonzalez, Hadwick, Hoover, Johnson, Macedo, Patterson, Sanchez, Ta, Tangipa, Wallis
NO VOTE RECORDED: Addis, Alanis, Bains, Bryan, Dixon, Ellis, Flora, Gallagher, Lackey, Patel, Celeste Rodriguez, Schiavo

Prepared by: Olgalilia Ramirez / ED. / (916) 651-4105
8/17/26 11:19:11

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