

ACA 5: California Act for Economic Prosperity

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SUMMARY

ACA 5 will allow Californian voters to remove an outdated and antiquated law that restricts local and state leaders from minimizing inequality, and promoting economic fairness. This measure seeks to prevent continued discrimination against women and people of color by allowing gender, racial and ethnic diversity to be considered as one of many factors in public employment, public contracting, and public education.

ISSUE & BACKGROUND

Proposition 209 (Prop. 209), entitled the *California Civil Rights Initiative*, approved by California voters in 1996, added Article I, section 31 to the California Constitution to prohibit race- and gender-conscious remedies that rectified the underutilization of women and people of color in public employment, contracting and education. The anti-equal opportunity measure ended almost all programs designed to open the doors of equal opportunity for women and people of color in California's public sector.

Affirmative action and equal opportunity programs began in earnest with the Kennedy administration's Executive Order 10925, which required all government contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin." Federal statutes *required* government entities to take proactive steps to ensure fair and equal opportunities for previously excluded groups. For example, the Public Works Employment Act of 1977 required any local entity that received federal funds for public works projects to ensure that a specified portion of those funds went to a M/WBE (minority or women-owned business enterprise).

In California, prior to Proposition 209, the opportunity gap faced by women and people of color had begun to shrink as state agencies enacted policies to eliminate traditional patterns of

segregation and exclusion in the workforce and to increase the representation of women and minorities in the state service, without effectuating quota systems (*Regents of University of California v. Bakke*).

However, after the passage of Prop 209 California's interest in supporting the equal participation of women and addressing the historical and present displays of gender bias and in creating policies to enforce anti-discrimination in the workplace and on public projects were impeded.

California ended its MWBE program due to the passage of Prop 209 and only a few MWBEs regained contracts with the state. California's MWBEs have lost \$1 billion annually in lost public contract awards directly due to Prop. 209 barriers. Many businesses owned by women and people of color closed and most procurement and sub-contracting processes remain effectively closed to these groups due to the changes brought on by Prop 209.

The impact of Prop 209 has hindered the State's ability to eliminate discrimination and disparity. It diminished the diversity efforts for our civil servants including agency/department leadership; our teachers, staff, faculty, administrators on all levels of education and our emergency responders including police and firefighters. Moreover, it directly led to 12-60% reduction in admission and enrollment of students of color at the University of California depending on location.

Importantly, Proposition 209 is unnecessary because United States constitutional law already significantly limits affirmative action. It is undesirable because unlike the United States Constitution, it eliminates affirmative action even when it is necessary to achieve a compelling purpose and it thus has had a devastating effect on diversity and remedying discrimination in California.

California is one of only eight states to have an anti-equal opportunity ban.

THIS BILL WOULD

ACA 5 removes Article I, section 31 from the California Constitution and restores it to allow our state and local governments to join forty-two other states and the federal government to operate programs that provide access to equal opportunity programs and economic advancement.

After 24 years, ACA 5 would allow California voters to express their views about remedies for gender bias and disparity and to remove the ban on equal opportunity—repeal Proposition 209.

SIMILAR LEGISLATION

SCA 5 (Hernández, 2013) constitutional amendment to amend Prop 209 to allow in the operation public education to consider race, sex, color, ethnicity, or national origin. Passed Senate Floor.

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. Held in Assembly Judiciary Committee.

SUPPORT

Chinese for Affirmative Action
Mayor Libby Schaaf, City of Oakland
AAPI Women Lead
Abriendo Puertas/Opening Doors
ACLU California
Advancement Project
AFSCME, Local 3299
Alliance for Boys and Men of Color
Alliance for Children's Rights
American Association for Access, Equity and Diversity
American Civil Liberties Union, Northern and Southern California, and San Diego and Imperial Counties
American Federation of State, County and Municipal Employees, Local 3299
Anderson Baker Architects

Anti-defamation League
Asian Americans Advancing Justice, California
Asian Americans Advancing Justice, Los Angeles
Asian Law Alliance
Association of California State Employees with Disabilities
Aypal: Building API Community Power
Black Students of California United
Brother, Sons, Selves Coalition
Building Blocks for Kids
California Black Chamber of Commerce
California Change Lawyers
California Council on American-Islamic Relations
California Democratic African American Party
California Faculty Association
California Lulac
California Pan-Ethnic Health Network
California Reinvestment Coalition
California Religious Action Center of Reform Judaism
California State University Northridge - Department of Asian American Studies
California-Hawaii State Conference of the NAACP
Californians for Justice
Californians Together
Canal Alliance
Career Ladders Project
Center for Leadership, Equity, and Research
Child Care Law Center
Children Now
Children's Defense Fund-California
Chinese American Progressive Action
City of Oakland - City Attorney's Office
Communities United for Restorative Youth Justice
Community Coalition
Community Legal Services in East Palo Alto
Congregations Organized for Prophetic Engagement
Consumers for Auto Reliability and Safety
Cope of San Bernardino
Del Sol Group, Inc.
Disability Rights Education and Defense Fund
Diversity in Leadership Institute
East Bay Community Law Center

Education Board Partners
Empowering Pacific Islander Communities
Energy Convertors
Equal Justice Society
Faith in Action East Bay
Families in Schools
Fathers and Families of San Joaquin
Feminist Majority Foundation
Food for People
Fortune School of Education
Friends Committee on Legislation of California
Future Leaders of America
Gente Organizada
GO Public Schools
Greater Sacramento Urban League
Hispanic Association of Colleges and Universities
Hmong Cultural Center of Butte County
Hmong Innovating Politics
Inland Congregations United for Change
InnerCity Struggle
Innovate Public Schools
International Action Network for Gender Equity & Law
Justice in Aging
Khmer Girls in Action
Kid City Hope Place
LA Comadre
Lao American National Alliance
Latino and Latina Roundtable of the San Gabriel and Pomona Valley
Lawyers' Committee for Civil Rights Under Law
Long Beach Coalition for Good Jobs and a Healthy Community
LS Consulting
Maternal and Child Health Access
National Action Network - Sacramento Chapter
National Association of Women Business Owners – California
National Center for Transgender Equality
National Center for Youth Law
National Women's Law Center
New Life Christian Church
Nextgen California
OCA Sacramento - Asian Pacific American Advocates
Officers for Justice Peace Officers Association
Parent Organizing Network

Policy Link
Poverty & Race Research Action Council
Public Advocates Inc.
Public Counsel
Reappropriate
Reinvent Stockton Foundation
Resilience Orange County
Rex and Margaret Fortune School of Education
Rubicon Programs
San Francisco African American Chamber of Commerce
Social Justice Collaborative
Somos Mayfair
Southeast Asia Resource Action Center
Southern California College Access Network
Speak UP
Teach for America
Teach for America Los Angeles
Teach Plus
The Cambodian Family Community Center
The Desertsong Group
The Education Trust – West
The Fresno Center
The Hawk Institute
The Leadership Conference on Civil and Human Rights
The Praxis Project
The Village Nation
True Plus
UC Berkley School of Law
United Cambodian Community
United Negro College Fund
University of California Student Association
Urban League - Greater Sacramento
USC Race and Equity Center
Western Center on Law and Poverty
Workplace Fairness
Youth and Education Law Project, Mills Legal Clinic of Stanford Law School
10,000 Degrees
28 California Black and African American Academics and Scholars
6 California Latin-x Academics and Scholars
71 Asian American and Pacific Islander Individuals

FOR MORE INFORMATION

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