

AMENDED IN ASSEMBLY MAY 4, 2020

AMENDED IN ASSEMBLY MARCH 9, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

## Assembly Constitutional Amendment

**No. 5**

**Introduced by Assembly Members ~~Weber and Gipson~~ Weber,  
Gipson, and Santiago**

**(Coauthors: Assembly Members *Burke, Cooper, Gonzalez, Holden,*  
*Jones-Sawyer, —and— Kamlager* *Kamlager, McCarty, and*  
*Mark Stone*)**

**(Coauthor: Senator Mitchell)**

**(Coauthors: Senators *Bradford, Mitchell and Hueso*)**

January 18, 2019

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Assembly Constitutional Amendment No. 5—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by repealing Section 31 of Article I thereof, relating to government preferences.

### LEGISLATIVE COUNSEL'S DIGEST

ACA 5, as amended, Weber. Government preferences.

The California Constitution, pursuant to provisions enacted by the initiative Proposition 209 in 1996, prohibits the state 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. The California Constitution defines the state for these purposes to include the state, any city, county, public university system, community college district, school district, special district, or any other political subdivision or governmental instrumentality of, or within, the state.

This measure would repeal these provisions. The measure would also make a statement of legislative findings in this regard.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

1 WHEREAS, Equal opportunity is deeply rooted in the American  
2 ideals of fairness, justice, and equality. Programs to meet the goals  
3 of equal opportunity seek to realize these basic values. Equal  
4 opportunity not only helps individuals, but also helps communities  
5 in need and benefits our larger society. California's equal  
6 opportunity program was upended by the passage of Proposition  
7 209 in 1996; and

8 WHEREAS, Proposition 209, entitled the California Civil Rights  
9 Initiative, amended Article I of the California Constitution to  
10 prohibit race- and gender-conscious remedies to rectify the  
11 underutilization of women and people of color in public  
12 employment, as well as public contracting and education; and

13 WHEREAS, Proposition 209 invalidated a series of laws that  
14 had been enacted by the California Legislature over the 20 years  
15 prior to it that required state agencies to eliminate traditional  
16 patterns of segregation and exclusion in the workforce, to increase  
17 the representation of women and minorities in the state service by  
18 identifying jobs for which their employment was underrepresented  
19 due to discrimination, and to develop action plans to remedy such  
20 underrepresentation without effectuating quota systems; and

21 WHEREAS, Proposition 209 also overshadowed other landmark  
22 civil rights and antidiscrimination laws. In 1959, after a 37-year  
23 campaign by labor and civil rights groups, the Unruh Civil Rights  
24 Act was passed, which was the forerunner of the Civil Rights Act  
25 of 1964; and

26 WHEREAS, As a result of the passage of Proposition 209,  
27 women and people of color continue to face discrimination and  
28 disparity in opportunities to participate in numerous forms of  
29 association and work that are crucial to the development of talents  
30 and capabilities that enable people to contribute meaningfully to,  
31 and benefit from, the collective possibilities of national life; and

32 WHEREAS, The State of California has provided employment  
33 opportunities for people of color and women of all races. However,  
34 lingering, and even increasing, disparity still exists, particularly  
35 for *Asian Americans*, *Pacific Islanders*, *Black Americans*, *Latino*

1 Americans, *Native Americans*, and women, and should be rectified;  
2 and

3 WHEREAS, Proposition 209 has impeded California's  
4 continuing interest in supporting the equal participation of women  
5 in the workforce and in public works projects, in addressing the  
6 historical and present manifestations of gender bias, and in  
7 promulgating policies to enforce antidiscrimination in the  
8 workplace and on public projects; and

9 WHEREAS, In the wake of Proposition 209, California saw  
10 stark workforce diversity reductions for people of color and women  
11 in public contracting and in public education. Studies show that  
12 more diverse workforces perform better financially and are  
13 significantly more productive and focused; and

14 WHEREAS, Since the passage of Proposition 209, the state's  
15 minority-owned and women-owned business enterprise programs  
16 have been decimated. A 2016 study conservatively estimates that  
17 the implementation of Proposition 209 cost women and people of  
18 color over \$1,000,000,000 annually in lost contract awards. Most  
19 procurement and subcontracting processes remain effectively  
20 closed to these groups due to the changes brought on by Proposition  
21 209; and

22 WHEREAS, Women are vastly underrepresented among firms  
23 receiving public contracts and the dollars awarded to certified  
24 women-owned business enterprises fell by roughly 40 percent,  
25 compared to levels before Proposition 209. In addition, only  
26 one-third of certified minority business enterprises in California's  
27 transportation construction industry are still in operation today,  
28 compared to 20 years ago; and

29 WHEREAS, Women, particularly women of color, continue to  
30 face unequal pay for equal work. White women are paid 80 cents  
31 to every dollar paid to white men doing the same work. Black  
32 women are paid 60 cents for every dollar paid to white men doing  
33 the same work and would theoretically have to work an extra seven  
34 months every year to overcome that differential. This persistent  
35 gender wage gap continues to harm women, their families, and  
36 communities; and

37 WHEREAS, Despite a booming economy with almost full  
38 employment, a persistent racial wealth gap remains rooted in  
39 income inequality. Improving minority access to educational and

1 labor market opportunity reduces the wealth gap and strengthens  
2 the economy; and

3 WHEREAS, Proposition 209 has had a devastating impact on  
4 minority equal opportunity and access to California's publicly  
5 funded institutions of higher education. This violates the spirit of  
6 the California Master Plan for Higher Education by making it more  
7 difficult for many students to obtain an affordable and accessible  
8 high quality public education. While federal law allows schools  
9 to use race as a factor when making admissions decisions,  
10 California universities are prohibited by Proposition 209 from  
11 engaging in targeted outreach and extra efforts to matriculate  
12 high-performing minority students. This reduces the graduation  
13 rates of students of color and, in turn, contributes to the diminution  
14 of the "pipeline" of candidates of color for faculty positions; and

15 WHEREAS, Since the passage of Proposition 209, diversity  
16 within public educational institutions has been stymied. Proposition  
17 209 instigated a dramatic change in admissions policy at the  
18 University of California, with underrepresented group enrollment  
19 at the Berkeley and Los Angeles campuses of the University of  
20 California immediately falling by more than 60 percent and  
21 systemwide underrepresented group enrollment falling by at least  
22 12 percent. Underrepresented group high school graduates faced  
23 substantial long-term declines in educational and employment  
24 outcomes as a result of these changes; and

25 WHEREAS, Among California high school graduates who apply  
26 to the University of California, passage of Proposition 209 has led  
27 to a decreased likelihood of earning a college degree within six  
28 years, a decreased likelihood of ever earning a graduate degree,  
29 and long-run declines in average wages and the likelihood of  
30 earning high wages measured by California standards. The  
31 University of California has never recovered the same level of  
32 diversity that it had before the loss of affirmative action nearly 20  
33 years ago, a level that, at the time, was widely considered to be  
34 inadequate to meet the needs of the state and its young people  
35 because it did not achieve parity with the state's ethnic  
36 demographics; and

37 WHEREAS, The importance of diversity in educational settings  
38 cannot be overstated. The Supreme Court of the United States  
39 outlined the benefits that arise from diversity, as follows, "the  
40 destruction of stereotypes, the promotion of cross-racial

1 understanding, the preparation of a student body for an increasingly  
2 diverse workforce and society, and the cultivation of a set of leaders  
3 with legitimacy in the eyes of the citizenry”; and

4 WHEREAS, Federal courts continue to reaffirm the value of  
5 diversity in favor of race conscious admissions, as exemplified by  
6 United States District Judge Allison D. Burroughs who stated,  
7 “race conscious admissions programs that survive strict scrutiny  
8 have an important place in society and help ensure that colleges  
9 and universities can offer a diverse atmosphere that fosters learning,  
10 improves scholarship, and encourages mutual respect and  
11 understanding. Further, Judge Burroughs recognized that there are  
12 no race-neutral alternatives that would allow a university to achieve  
13 an adequately diverse student body while still perpetuating its  
14 standards for academic and other forms of excellence; and

15 WHEREAS, It is the intent of the Legislature that California  
16 remedy discrimination against, and underrepresentation of, certain  
17 disadvantaged groups in a manner consistent with the United States  
18 Constitution and allow gender, racial, and ethnic diversity to be  
19 considered among the factors used to decide college admissions  
20 and hiring and contracting by government institutions; and

21 WHEREAS, It is further the intent of the Legislature that  
22 California transcend a legacy of unequal treatment of marginalized  
23 groups and promote fairness and equal citizenship by affording  
24 the members of marginalized groups a fair and full opportunity to  
25 be integrated into state public institutions that advance upward  
26 mobility, pay equity, and racial wealth gap reduction; now,  
27 therefore, be it

28 *Resolved by the Assembly, the Senate concurring*, That the  
29 Legislature of the State of California at its 2019–20 Regular  
30 Session commencing on the third day of December 2018,  
31 two-thirds of the membership of each house concurring, hereby  
32 proposes to the people of the State of California, that the  
33 Constitution of the State be amended as follows:

1 That Section 31 of Article I thereof is repealed.

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4 **REVISIONS:**

5 **Heading—Lines 1 and 5.**

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