

# **PROPOSITION 16:**

## **AUTHORIZES CALIFORNIA REPEAL PROPOSITION 209 AFFIRMATIVE ACTION AMENDMENT.** Legislatively Referred Constitutional Amendment.

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### **Ballot Summary:**

This measure will amend the California Constitution by repealing Section 31 of Article I enacted pursuant to Proposition 209 in 1996 that prohibits the state and all institutions and political subdivisions thereof 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.

### **Background:**

Proposition 209, also known as the “California Civil Rights Initiative” amended the California Constitution to prohibit all government agencies and institutions from giving preferential treatment to individuals on the basis of race or sex, effectively banning affirmative action in government hiring, contracting and admissions at public universities in the state. Voters approved Prop. 209 in 1996 by a 55% to 45%.

During the late 1970s, the use of affirmative action led to court challenges alleging it was “reverse discrimination” against white people. After the passage of Proposition 209 in 1996, several other states attempted to adopt, or adopted, similar bans on affirmative action including Washington, Florida, Michigan, Nebraska, Arizona, New Hampshire, and Oklahoma.

Decades after Proposition 209 prohibited affirmative action in the state, stark disparities by race and gender persist. A recent study from the Economic Policy Institute showed that Black workers are twice as likely to be unemployed, and that a similar disparity exists among college-educated Black workers and their white counterparts. Similarly, the gender pay gap remains—the Institute for Women’s Policy Research (IWPR) on average, women make 82 cents for every dollar earned by men. Women of color and single moms make less than 60 cents on the dollar for the same work as their white male counterparts. If the United States maintains the current level of progress towards pay equity, it will take until 2059 to achieve pay equity. Black women will not achieve pay equity with white men until 2130 and Latinas will not achieve pay equity with white men until 2224.

In addition, a 2015 study showed that businesses owned by women and people of color lose \$1.1 billion annually in government contracts in California due to Prop. 209. Just a third of leadership and tenured faculty positions at the California Community Colleges, California State University, and the University of California are held by Black, Latino, or Asian-American scholars. At UC, women make up 54 percent of enrolled students, but just one third of the tenured faculty and less than a third of the members of the Board of Regents.

### **Fiscal impact:**

This bill would result in one-time General Fund costs to the Secretary of State (SOS) in the range of \$480,000 to \$640,000, likely in 2020-21, 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. Additionally, the California Department of Human Resources (CalHR) would incur one-time General Fund costs, likely in the hundreds of thousands of dollars, to modify hiring practices to accommodate new hiring programs or standards.

## **Support and Opposition:**

Supporters include a large and broad coalition of education, community, legal, racial justice, labor, faith, academic and many other organizations. Supporters state that overturning California's ban on programs that promote equal opportunity is long overdue and the COVID-19 pandemic only heightens the importance of bringing fairness to state public contracting and employment practices. They contend that California needs to hire more women to positions of leadership, contract with businesses that reflect the diversity of California, and expand access to higher education and that we can't continue to deny Californians an opportunity to succeed simply because of how they look or who they are. They say this initiative will level the playing field and allow all Californians to find a good job, earn a decent wage and get ahead in life and their careers.

Opponents include Republican elected officials, legal and academic groups who say that affirmative action is divisive and discriminatory. They contend that this measure would legalize racism and sexism and that a person should be judged by their merit and not their race or gender. Some supporters contend that enforcing equal outcome regardless of qualification and effort bears the hallmark of communism. They also contend that Prop. 209 won the popular vote in 1996 and has withstood legal scrutiny over time and should not be overturned.

## **Prior Positions:**

The Federation took an oppose position on Proposition 209 (1996) which prohibited the use of affirmative action by the state in hiring, contracting and school admissions.

## **A YES vote on this measure means:**

Voters support amending the state Constitution to repeal Proposition 209 (1996), which prohibited the state from granting preferential treatment to persons on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, and public contracting.

## **A NO vote on this measure means:**

Voters oppose amending the state Constitution to repeal Proposition 209.