



MEMORANDUM

TO: Norma J. Camacho
Chief Executive Officer

FROM: Rick L. Callender
Chief of External Affairs

SUBJECT: EL 7.8 Recommended
Emergency Position on:

DATE: June 20, 2020

**RE: ACA 5 (Weber) Government Preferences: Repeal of
Proposition 209 – SUPPORT**

Pursuant to Board Governance Policy EL 7.8 regarding emergency positions on legislation, staff recommends a position of SUPPORT on Assembly Constitutional Amendment (ACA) 5 (Weber) Government Preferences: Repeal of Proposition 209.

Following the CEO's approval, I will forward the recommendation to the Board Chair for concurrence. In the event the Chair does not concur with the recommended position, staff will not communicate a formal position on behalf of the Board. If you have any questions regarding this item, please call me at extension 2017 or Rachael Gibson at extension 2884.

ANALYSIS

ACA 5 (Weber) would place a constitutional amendment on the November 3, 2020 ballot to repeal Proposition 209 (Article I, Section 31 of the California Constitution), thereby permitting the use of race and gender as decision factors in public employment, public education and public contracting. This measure also makes findings on how Proposition 209 invalidated laws requiring state agencies to eliminate traditional patterns of segregation and exclusion in the workforce, and states the intent of the Legislature to allow the consideration of gender, racial, and ethnic diversity among factors for college admissions, government hiring, and public contracting.

In November 1996, the voters of California passed Proposition 209, the California Civil Rights Initiative, by a 55 to 45 percent margin. After nearly 25 years, public opinion on issues of race and gender have changed, as has California's increasingly diverse electorate. Supported by Governor Pete Wilson and Ward Connerly, a businessman and former University of California Regent, Proposition 209 qualified for the ballot through the collection of voter signatures. The campaign advocated for a colorblind society, celebrating the "melting pot," and looking forward to the end of racial prejudice in American society.

ACA 5 makes numerous findings regarding the impacts of Proposition 209 and points to well-documented economic disparities for women and people of color. The findings

cite a 2016 study which estimated that the implementation of Proposition 209 costs women and people of color over \$1 billion annually in lost public contract awards, and asserts that most public procurement and subcontracting remain effectively closed to these groups due in part to the limitations enacted by Proposition 209.

Irrespective of the merits of a colorblind society, data and current events suggest that we are not currently living in one. Economic and sociological studies reveal that the tools to compete in the American economy are unevenly distributed, perpetuating historical inequality between races and genders.

In September 2008, the Thelton E. Henderson Center for Social Justice at the University of California Berkeley School of Law released a report based on trends in public employment by the State of California since 1990.¹ The percentage of the working age population was compared to state civil service employment rates by gender and race. The key findings in the report are quoted below.

There is modest, but persistent, gender disparity. Men were more likely to be employed as civil servants than women, even after accounting for differences in the working age population. Disparity increased in the mid-1990s, around the time Proposition 209 was on the ballot, and remained steady during the following decade.

Trends over time are largely the same for men and women within each racial and ethnic group. White American men are much more likely to be employed in the civil service than White American women, though for African Americans and Filipino Americans, women are more likely than men to be employed.

People of color show rapid gains in employment as civil servants, though these gains trail increases in the working age population. Over time, the number of people of color in the civil service has grown while the number of White American civil servants has remained constant. However, the civil service employment rate for people of color has lagged several years behind changes in the working age population.

Latino Americans are greatly underrepresented in civil service positions. Latino Americans, though making large gains in terms of the number of civil servants, are vastly underrepresented relative to their population. Furthermore, this disparity has grown over time. White Americans and African Americans are overrepresented as civil servants, while Asian Pacific Islander Americans have mostly been at parity.

The repeal of Proposition 209 would permit the use of race and gender as “plus” factors in college admissions, public employment, and public contracting. It would not permit the use of quotas or policies that are broad in scope and do not consider the totality of the individual college applicant, job candidate, or contract bidder.

¹ Michael D. Sumner, PhD., “Proposition 209 and Public Employment in California: Trends in Workforce Diversity,” Thelton E. Henderson Center for Social Justice (Berkeley Law – University of California, 2008), 2.
<https://www.law.berkeley.edu/wp-content/uploads/2016/07/Proposition-209-and-Public-Employment-Workforce-Diversity.pdf>

Impacts to Valley Water

Valley Water is committed to creating an inclusive work environment which supports the diversity of our community and enriches our perspectives. Valley Water delivers on its mission of water supply, flood protection, and environmental stewardship by depending on a workforce that finds strength and creativity in its diversity.

The passage of ACA 5 and subsequent approval by the voters in November will present Valley Water with an opportunity to intentionally consider women and minority owned business enterprises for contract opportunities. Born from increased opportunity in recent decades, these businesses often are small, relatively new companies that may lack expertise in public contracting process but deliver a quality product or service. Allowing race and gender as factors to be considered in the awarding of public contracts will create more opportunities for women and people of color, thereby fostering social and economic justice, building stronger more resilient communities in Santa Clara County.

Staff recommends a position of “Support” on ACA 5 in compliance with the Board’s direction to build a diverse workforce that values diversity and inclusion, and to advance the goals of Valley Water’s Small and Local Business Program.

Pros

- Amends the California Constitution to remove a prohibition on consideration of race and gender as a factor in hiring decisions by public agencies, if that consideration is not prejudicial in its application.
- Allows reinstatement of Women and Minority-Owned Business Enterprise programs and could restore \$1 billion annually in public contract awards in California.

Cons

- May require a review of employment and contracting policies to reflect changes to the California Constitution.

URGENCY

Urgency is required because the Legislature is working on an abbreviated schedule due to the COVID-19 pandemic. ACA 5 could be sent to the Governor after a vote in the Senate as soon as Tuesday, June 24, 2020.

Policy basis for recommended positions: The request is consistent with Board Governance Policy 11, which includes the following preamble.

The Board of Directors is committed to providing equal employment opportunity to all persons and to building a diverse work force that values diversity and inclusion.

The Board firmly believes that such a work force provides advantages both internally, in terms of the human resources potential offered by a variety of diverse perspectives, and externally, in increasing the District's ability to respond to the community we serve.

The Board understands that diversity is more than inclusion of racial or cultural groups, that valuing diversity involves respect for all persons, and that valuing diversity requires a positive change in the way we interact with each other and a change in our organizational culture.



Rick L. Callender
Chief of External Affairs



Norma J. Camacho
Chief Executive Officer

Board Concurrence Section

Comments:

Sign Off for Concurrence with Staff Recommendations Pursuant to EL-7.8:



SCVWD Board Chair or Designee

6/22/2020

Date