



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

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CONSENT CALENDAR  
 June 30, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Councilmember Davila (Co-Sponsor), Councilmember Bartlett (Co-Sponsor), and Mayor Arreguin (Co-Sponsor)

Subject: Support for ACA 5: California Act for Economic Prosperity

RECOMMENDATION

Adopt a resolution in support of ACA 5, which would place a measure on the statewide ballot to repeal Proposition 209 (1996) and allow the State of California to pursue minority equal opportunity and access initiatives in public employment, education, and contracting. Send copies of the resolution to Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, Lorena Gonzalez, and Buffy Wicks, and State Senator Nancy Skinner.

BACKGROUND

Assembly Constitutional Amendment (ACA) 5, introduced by Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, and Lorena Gonzalez, would initiate a ballot measure for the November 3, 2020 general election to repeal Proposition 209, the ban on affirmative action.

Proposition 209, known as the California Civil Rights Initiative, was approved by voters on the November 1996 ballot by a margin of 54 to 46 percent.<sup>1</sup> The proposition added Section 31 to Article I of the California Constitution, which reads, "The State shall not discriminate against, or grant 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."<sup>2</sup> Today, California is one of only eight states to ban affirmative action.<sup>3</sup>

The consequences of Proposition 209 are evident right here in Berkeley. Black students at UC Berkeley made up 6.7 percent of all enrolled California resident freshmen in 1995. Two years after the proposition's passage, this figure dropped to only 3.7

<sup>1</sup> <https://escholarship.org/content/qt5580z80z/qt5580z80z.pdf>

<sup>2</sup>

[https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=1](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=1)

<sup>3</sup> <https://www.jamesgmartin.center/2019/10/did-you-know-eight-states-ban-affirmative-action-in-college-admissions/>

percent.<sup>4</sup> In Fall 2019, Black students made up only 2.8% of all new freshman enrollment.<sup>5</sup> A report from the Race and Equity Center at the University of Southern California named UC Berkeley as the worst UC campus for Black students, based on equity indicators such as percentage of Black students, graduation rates, and representation in faculty.<sup>6</sup> According to a statement by the Cal Black Student Union, UC Berkeley also has “the highest gap between Black student enrollment and the racial demographic of the surrounding area,” showing that historically Black neighborhoods in Berkeley and Oakland are not being adequately served by institutions of higher education.<sup>7</sup>

Proposition 209 has devastated universities’ ability to serve Black students and non-Black students of color. In a single year following its passage, UC Berkeley’s admission rate dropped 29.3 percent for Black applicants, 32.2 percent for Native American applicants, 31.4 percent for Chicax applicants, and 6.9 percent for Latinx applicants.<sup>8</sup> The affirmative action ban stifled recruitment and retention efforts for underrepresented minorities, including Southeast Asian, Pacific Islander, and Native Hawaiian students.<sup>9</sup> The passage of ACA 5 would bring justice to these communities and help achieve Chancellor Carol Christ’s goal of making UC Berkeley a Hispanic Serving Institution (HSI) by 2027.<sup>10</sup>

ACA 5, which would also empower local governments to actively pursue minority equal opportunity and access initiatives in their hiring processes, is aligned with the City of Berkeley’s commitment to equal opportunity and diversity in our workforce.

Prior to the passage of Proposition 209, the opportunity gap faced by women and people of color had shrunk considerably. Two and a half decades later, these same populations are worse off due to the persistent discrimination that this proposition has failed to uproot. Proposition 209 has deprived minority and women-owned businesses of equal opportunities to fully contribute to our state’s economic growth.

Despite the climb of California’s Latinx population, they remain heavily underrepresented in state jobs. The amount of Black state workers has decreased since 1996 while the number of non-minority males increased, especially in executive leadership positions. The number of women employed in the construction industry had

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<sup>4</sup> <https://www.dailycal.org/2018/02/02/prop-209-affirmative-action-uc-berkeley-enrollment/>

<sup>5</sup> <https://opa.berkeley.edu/uc-berkeley-fall-enrollment-data>

<sup>6</sup> <https://www.sfgate.com/bayarea/article/Worst-public-California-schools-black-students-Cal-13264172.php>

<sup>7</sup> <https://twitter.com/CalBSU/status/1048022055193464833/photo/1>

<sup>8</sup> <http://reappropriate.co/2014/03/the-effect-of-prop-209-on-uc-admissions-and-campus-diversity-edu4all-noliesnohate-sca5/>

<sup>9</sup> <https://diversity.universityofcalifornia.edu/files/documents/prop-209-summary.pdf>

<sup>10</sup> <https://chancellor.berkeley.edu/task-forces/hispanic-serving-institution-task-force>

initially increased by 26 percent between 1990 and 1996; it declined by 33 percent after the passage of Proposition 209. Finally, minority and women business enterprises (MWBs), which had been erasing the disparity between their availability and their utilization, were heavily impacted. Some never recovered, resulting in a loss of \$1.1 billion annually for MWBs.

Allowing gender, racial, and ethnic diversity to be considered as one of many factors in public employment, contracting, and education will strengthen the City's ability to equitably serve its residents. As a city that is home to one of the largest public universities in California and committed to equal opportunity, the City of Berkeley should adopt a resolution in support of ACA 5 and send copies of the resolution to Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, Lorena Gonzalez, and Buffy Wicks, and State Senator Nancy Skinner.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

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Attachments:

1: Resolution

2: Bill text

[http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200ACA5](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200ACA5)

RESOLUTION NO. ~~##,###~~-N.S.

RESOLUTION IN SUPPORT OF ACA 5, THE CALIFORNIA ACT FOR ECONOMIC PROSPERITY

WHEREAS, in 1996, Governor Pete Wilson spearheaded the passage of Proposition 209, preventing equal opportunity in contracting, hiring, and education in city, county, public university system, community college district, school district, special district, and other government agencies; and

WHEREAS, California is one of only eight states that outlaw policies to promote equal opportunities, and states with affirmative action policies see greater gains for women and students, businesses, and people of color; and

WHEREAS, Black students at UC Berkeley made up only 2.8% of all new freshman enrollment in Fall 2019, down from 6.7% in 1995, resulting in a report naming UC Berkeley as the worst UC campus for Black students despite its proximity to historically Black neighborhoods in Berkeley and Oakland; and

WHEREAS, Proposition 209 has devastated universities' ability to serve Black students and non-Black students of color, stifling admission rates and recruitment and retention efforts for Black, Native American, Latinx, Southeast Asian, Pacific Islander, and Native Hawaiian communities; and

WHEREAS, repealing Proposition 209 would level the playing field for women in government contracts, where women and people of color have lost \$1.1 billion annually, and especially in the University of California system, where women make up 54 percent of students, yet only account for 33 percent of tenured faculty and 39 percent of senior leadership; and

WHEREAS, Assembly Constitution Amendment No. 5 (ACA 5) will repeal Proposition 209 and reinstate affirmative action in public contracting, hiring and public education, which is estimated to generate an additional \$138 billion in personal income for California families; and

WHEREAS, the current COVID-19 pandemic has had a demonstrated and disproportionate impact on minority-owned small businesses and an equitable economic recovery must include targeted, race-conscious governmental intervention; and

WHEREAS now, more than ever, we must support and pass ACA 5 in order to ensure that the most impacted communities receive equitable support and to take a strong

stance against racism, sexism, and xenophobia, and the current policies on the federal level that use race and gender to divide our communities.

NOW THEREFORE, BE IT RESOLVED that the City of Berkeley supports ACA 5, the California Act for Economic Prosperity, on the statewide ballot to allow gender, racial, and ethnic diversity to be considered as one of many factors in public employment, education, and contracting.

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.

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.

