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ALLOWS DIVERSITY AS A FACTOR IN PUBLIC EMPLOYMENT, EDUCATION, AND CONTRACTING DECISIONS. LEGISLATIVE CONSTITUTIONAL AMENDMENT

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PROPOSITION
16 **ALLOWS DIVERSITY AS A FACTOR IN PUBLIC EMPLOYMENT,
EDUCATION, AND CONTRACTING DECISIONS.
LEGISLATIVE CONSTITUTIONAL AMENDMENT.**

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

The text of this measure can be found on the Secretary of State's website at voterguide.sos.ca.gov.

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- Permits government decision-making policies to consider race, sex, color, ethnicity, or national origin to address diversity by repealing article I, section 31, of the California Constitution, which was added by Proposition 209 in 1996.
- Proposition 209 generally prohibits state and local governments from discriminating against, or granting preferential treatment to, individuals or groups on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, education, or contracting.
- Does not alter other state and federal laws guaranteeing equal protection and prohibiting unlawful discrimination.

SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- No direct fiscal effect on state and local entities because the measure does not require any change to current policies or programs.
- Possible fiscal effects would depend on future choices by state and local entities to implement policies or programs that consider race, sex, color, ethnicity, or national origin in public education, public employment, and public contracting. These fiscal effects are highly uncertain.

FINAL VOTES CAST BY THE LEGISLATURE ON ACA 5 (PROPOSITION 16)
(RESOLUTION CHAPTER 23, STATUTES OF 2020)

Senate:	Ayes 30	Noes 10
Assembly:	Ayes 60	Noes 14

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

State and Federal Constitutions Require Equal Protection.

The state and federal constitutions provide all people equal protection, which generally means that people in similar situations are treated similarly under the law.

In 1996, California Voters Banned Consideration of Race, Sex, Color, Ethnicity, or National Origin in Public Programs. In 1996, California voters approved Proposition 209, adding a new section to the State Constitution—Section 31 of Article I. The new section generally banned the consideration of race, sex, color, ethnicity, or national origin in public employment, public education, and public contracting in California.

There Are Some Exceptions to Proposition 209. State and local entities can consider sex when it is necessary as part of normal operations. For example, the state can consider the sex of an employee when staffing specific jobs at state prisons where it is

necessary for staff and inmates be the same sex. Additionally, state and local entities may consider specified characteristics when it is required to receive federal funding. For example, the state is required to set goals for the portion of contracts awarded to certain groups for federally funded transportation projects, like businesses owned by women and people of color.

Proposition 209 Affected Certain Public Policies and Programs. Before Proposition 209, state and local entities had policies and programs intended to increase opportunities and representation for people who faced inequalities as a result of their race, sex, color, ethnicity, or national origin. These types of programs often are called “affirmative action” programs. For example, some of the state’s public universities considered race and ethnicity as factors when making admissions decisions and offered programs to support the academic achievement of those students. State and local entities had

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

employment and recruitment policies intended to increase the hiring of people of color and women. The state also established programs to increase the participation of women-owned and minority-owned businesses in public contracts. The state set goals for the portion of state contracts that were awarded to those types of businesses. After voters approved Proposition 209, these policies and programs were discontinued or modified unless they qualified for one of the exceptions.

Federal Law Allows Policies and Programs That Consider Certain Characteristics, Within Limits. Before Proposition 209, state and local policies and programs that considered race, sex, color, ethnicity, or national origin still had to comply with federal law. Federal law establishes a right to equal protection and as a result limits the use of these considerations. For example, under federal law, universities may consider these characteristics as one of several factors when making admission decisions in an effort to make their campuses more diverse. To ensure compliance with federal law, these policies and programs must meet certain conditions that limit the consideration of these characteristics. These conditions are intended to prevent discrimination that violates equal protection. State law also has a number of antidiscrimination provisions that are similar to those in federal law.

Policies and Programs Created or Modified After Proposition 209. After voters approved Proposition 209, some public entities in California created or modified policies and programs to instead consider characteristics not banned by Proposition 209. For example, many of the state’s universities provide outreach and support programs for students who are first in their family to attend college. Many university campuses also consider where students attended high school and where they live when making admissions decisions. The universities view these policies and programs as ways to increase diversity without violating Proposition 209.

PROPOSAL

Eliminates Ban on the Consideration of Certain Characteristics in Public Education, Public Employment, and Public Contracting. If approved, the measure would repeal Proposition 209—Section 31 of Article I of

the California Constitution. This would eliminate the ban on the consideration of race, sex, color, ethnicity, or national origin in public education, public employment, and public contracting. As a result, state and local entities could establish a wider range of policies and programs so long as they are consistent with federal and state law related to equal protection.

FISCAL EFFECTS

No Direct Fiscal Effects on Public Entities. The measure would have no direct fiscal effect on state and local entities because the measure would not require any change to current policies or programs. Instead, any fiscal effects would depend on future choices by state and local entities to implement policies or programs that consider race, sex, color, ethnicity, or national origin in public education, public employment, and public contracting.

Potential Fiscal Effects of Implementing Programs Highly Uncertain. State and local entities could make any number of decisions about policies and programs that consider race, sex, color, ethnicity, or national origin. Because the specific choices state and local entities would make if voters approved this measure are unknown, the potential fiscal effects are highly uncertain.

Visit <http://cal-access.sos.ca.gov/campaign/measures/> for a list of committees primarily formed to support or oppose this measure.

Visit <http://www.fppc.ca.gov/transparency/top-contributors.html> to access the committee’s top 10 contributors.

If you desire a copy of the full text of this state measure, please call the Secretary of State at (800) 345-VOTE (8683) or you can email vigfeedback@sos.ca.gov and a copy will be mailed at no cost to you.