



April 30, 2020

The Honorable Freddie Rodriguez
Chair, Assembly Committee on Public Employment and Retirement
1020 N Street, Room 153
Sacramento, CA 95814

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*President and
Executive Director*
Kristen Clarke

RE: ACA 5 (Weber) — Support

Dear Chair Rodriguez:

We, the undersigned national organizations, are dedicated to fighting for justice and fulfilling the promise of equality for all Americans. We are writing in support of ACA 5, which will create equal opportunities for all Californians and fight discrimination and bias against women and people of color by reinstating affirmative action in public contracting, public employment, and public education.

This legislation is important not just for the future of California, but our nation as a whole. California is among the most racially and ethnically diverse states in the nation and boasts the largest economy and higher education system in the United States. Thus, **when the Golden State takes action, the impact is felt around the country, for better or worse.** In 1996, when Proposition 209 prohibited the state from considering race, sex, or ethnicity in hiring and college admissions, several states followed suit with their own efforts to rescind affirmative action—Washington in 1998, Florida in 1999, Michigan in 2006, Nebraska in 2008, Arizona in 2010, and New Hampshire, Oklahoma in 2012, and Idaho in 2020. This retrenchment led to a significant decrease in diversity in the workplace and on college campuses in these states and in California¹.

Diversity in Higher Education Admissions and Enrollment

In America, higher education has long been regarded as the doorway to social and economic mobility. Indeed, today, a college diploma confers substantially higher earnings on those with credentials than those without, by some estimates more than 80% over a lifetime.² But for too long in our nation's history, people of color and women were shut out from postsecondary education and its benefits. That door cracked open in 1965 when Lyndon B. Johnson signed the Higher Education Act into law which was aimed squarely at addressing racial and social inequality by granting access to women, establishing federal financial aid, and providing financial support to historically Black colleges and universities.³ However, in 1978, the Supreme Court in *Regents of University of California v. Bakke* limited the tools universities could use to create more equitable and diverse student bodies.

Proposition 209 continued this downward trend. In the first year following its implementation, offers of admission to Black and Latinx students at California's most selective institutions – University of California, Berkeley and the University of California, Los Angeles—plummeted by

¹See William C. Kidder, *Two Decades After the Affirmative Action Ban: Evaluating the University of California's Race-Neutral Efforts* (Oct. 2015), https://www.ets.org/Media/Research/pdf/kidder_paper.pdf; Fidan Ana Kurtulus, "The Impact of Eliminating Affirmative Action on Minority and Female Employment: A Natural Experiment Approach Using State-Level Affirmative Action Laws and EEO-4 Data." Working paper, University of Massachusetts Amherst and Harvard Law School, (October 30, 2013); Mark Long and Nicole Bateman, "Long-Run Changes in Underrepresentation After Affirmative Action Bans in Public Universities". Educational Evaluation and Policy Analysis. (April 2020). <https://doi.org/10.3102/0162373720904433>

² Anthony Carnevale, Stephen J. Rose and Ban Cheah, *The College Payoff: Education, Occupations, Lifetime Earnings*, Georgetown Center on Education and the Workforce (2011).

³ Tiffany Jones and Andrew Nichols. *Hard Truths: Why Only Race-Conscious Policies Can Fix Racism in Higher Education*. The Education Trust. (January 2020).

more than 50 percent.⁴ Asian Americans also experienced a systemwide decline in their admission rates, establishing that Asian Americans do not necessarily benefit under race-blind alternatives.⁵ Subsequently, despite over twenty years of investment in alternatives to considering race in admissions, the UC System has never returned to its previous levels of diversity.⁶

Today, even though Black and Latinx students' high school graduation rates have increased over the last two decades, their enrollment in most public colleges and universities has remained stagnant or declined in many states⁷ and they continue to be underrepresented at public flagship institutions.⁸ Despite the remarkable achievements and contributions that American Indian and Alaska Natives continue to make in society, Native American students are largely rendered invisible, feeding an intractable college access and completion crisis.⁹ And while some Asian American groups have better access and educational outcomes than others, underrepresented Asian American, Native Hawaiian, and Pacific Islander students continue to face unique and pressing challenges—poverty, language barriers, race-based bullying and harassment among others—that impede their opportunities.¹⁰

Yet, recent attacks on affirmative action and other constitutionally protected efforts to increase campus diversity at Harvard College, the University of North Carolina at Chapel Hill, the University of Texas at Austin, and elsewhere only threaten to exacerbate the underrepresentation of marginalized students. While the Court has revisited and upheld the limited use of race as a factor in college admissions in subsequent rulings, these constraints, along with state affirmative action bans and inadequate university admissions and financial aid policies, have undermined the spirit and intent of what the Higher Education Act sought to achieve. Thus, while many of the explicit barriers to access and opportunity have been dismantled and there has been progress in postsecondary outcomes for students of color and women, there is still much work to be done to ensure that California and the nation at large can fully harness the benefits of its racial and ethnic diversity.

Diversity in the Workforce and Teachers

Proposition 209 stands in the way of creating lawful employment opportunities and increasing diversity in the teacher workforce. While our student population becomes more diverse, recruiting, retaining and promoting teachers of color in K-12 and higher education lags far behind.

- Although people of color constitute more than one-third of the U.S. labor force, less than 20 percent of teachers in K-12 identify as people of color.¹¹
- In higher education, the number of underrepresented faculty of color remains small and significantly out of alignment with the undergraduate student body.¹²

⁴ William C. Kidder, *supra* note 1.

⁵ OiYan A. Poon, *Do Asian Americans Benefit From Race-Blind College Admissions Policies?*, National Commission on Asian American and Pacific Islander Research in Education 3 (2017), <https://files.eric.ed.gov/fulltext/ED573713.pdf>.

⁶ William C. Kidder, *supra* note 1.

⁷ Mark Hueslman, *Social Exclusion: The State of State U for Black Students*, Demos. (2018) https://www.demos.org/sites/default/files/publications/SocialExclusion_StateOf.pdf.

⁸ See Kati Haycock et al., *Opportunity Adrift: Our Flagship Universities Are Straying From Their Public Mission*. The Education Trust (2010); Andrew Howard Nichols and J. Oliver Schak, *Broken Mirrors: Black Representation at Public State Colleges and Universities*. The Education Trust. (2019); *The State of Higher Education in California, Asian Americans, Native Hawaiians Pacific Islanders*. The Campaign for College Opportunity (September 2015).

⁹ American Indian College Fund, *Creating Visibility and Healthy Learning Environments for Native Americans in Higher Education: Declaration of Native Purpose in Higher Education*. (2019).

¹⁰ The Education Trust, *Overlooked and Underserved Debunking the Asian "Model Minority" Myth in California Schools*. (August 2010) <https://west.edtrust.org/wp-content/uploads/sites/3/2015/01/ETW-Policy-Brief-August-2010-Overlooked-and-Underserved.pdf>.

¹¹ Catherine Brown and Ulrich Boser, *Revisiting the Persistent Teacher Diversity Problem*. Center for American Progress (September 2017).

¹² <https://www.americanprogress.org/issues/education-k-12/news/2017/09/28/415203/revisiting-persistent-teacher-diversity-problem/>

¹² Lorelle Espinosa, Jonathan M. Turk, et.al, "Race and Ethnicity in Higher Education: A Status Report," American Council on Education (2019).

- In California, while over three-quarters of its students in K-12 are students of color, less than forty percent of teachers identify as such, among the largest gaps in the country.¹³
- Only one-third of leadership and tenured faculty positions at the California Community Colleges, California State University System, and the University of California System are held by Black, Latinx, or Asian-American scholars.¹⁴
- At the University of California, women make up 54% of enrolled students, but just one-third of the tenured faculty and less than a third of the members of the Board of Regents.¹⁵

Teacher diversity matters. Research has demonstrated that students of color are less likely to drop out of high school and are more likely to aspire to college when exposed to at least one teacher of color.¹⁶ At the university level, faculty of color often serve in additional roles as mentors and guides to help students develop a sense of belonging and navigate hostile campus climates.¹⁷ However, creating a diverse teacher workforce and addressing these disparities in leadership requires an intentional approach to promote diversity and inclusion while eliminating barriers that undermine this effort.

We all lose out when we end affirmative action programs: diversity and cross-racial learning opportunities decline, racial hostility on college campuses worsens, and it becomes harder to hire diverse professionals across all sectors—from the military, to the medical field, to multinational companies—who are trained to lead in an increasingly diverse society and can mend our social divisions across race. Nowhere is this truer than in our classrooms.

All Californians deserve an equal shot at success. The State of California needs to hire more qualified women and people of color to positions of leadership, contract with businesses that reflect the diversity of California, and expand access to higher education for all Californians. It is imperative that we, as a nation—with California helping to lead the way—shift away from a colorblind framework that accepts the principle of equal opportunity under the law, yet resists deploying policies designed to overcome real, persistent racial and gender inequities and barriers to opportunity. ACA 5 charts a renewed path towards opportunity and justice for all.

Sincerely,

Lawyers' Committee for Civil Rights Under Law
American Assoc. for Access Equity &
Diversity
Asian Americans Advancing Justice
Feminist Majority
LatinoJustice PRLDEF
National Center for Transgender Equality

National Women's Law Center
OCA – Asian Pacific American Advocates
Poverty & Race Research Action Council
Religious Action Center of Reform Judaism
Teach For America
Workplace Fairness

¹³ Catherine Brown and Ulrich Boser, *supra* note 11.

¹⁴ Leticia Tomas Bustillos and Michele Siqueiros, *Left Out: How Exclusion in California's Colleges and Universities Hurts Our Values, Our Students, Our Economy*. The Campaign for College Opportunity. (March 2018).

¹⁵ *Id.*

¹⁶ Seth Gershenson, Cassandra M. D. Hart, et.al. *The Long-Run Impacts of Same-Race Teachers*, The IZA Institute of Labor Economics. (March 2017), <http://ftp.iza.org/dp10630.pdf>.

¹⁷ Lorelle Espinosa, et.al., *supra* note 12, at 276.

		
Lawyers' Committee for Civil Rights Under Law Kristen Clarke <i>Executive Director</i> 	American Association For Access, Equity, and Diversity Shirley Wilcher <i>Executive Director</i> 	Feminist Majority Katherine Spiller <i>Executive Director</i> 
		
LatinoJustice PRLDEF Jose Perez <i>Deputy General Counsel</i> 	National Center for Transgender Equality Mara Keisling <i>Executive Director</i> 	National Women's Law Center Emily Martin <i>Vice-President for Education & Workplace Justice</i> 
		
OCA – Asian Pacific American Advocates Rita Pin Ahrens <i>Executive Director</i> 	Poverty & Race Research Action Council Philip Tegeler <i>Executive Director</i> 	Religious Action Center of Reform Judaism Lee Winkelman <i>California Organizing Director</i> 
		
Teach For America Elisa Villanueva Beard <i>Chief Executive Officer</i> 	Workplace Fairness Edgar Ndjatou <i>Executive Director</i> 	