

File No. 201136

Committee Item No. _____

Board Item No. 66

COMMITTEE/BOARD OF SUPERVISORS

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Date: _____

Board of Supervisors Meeting

Date: October 6, 2020

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Prepared by: Lisa Lew

Date: October 2, 2020

Prepared by: _____

Date: _____

1 [Supporting California State Proposition 16 - Opportunities for All - November 3, 2020, Ballot]

2

3 **Resolution supporting California State Proposition 16, Opportunities for All, a**
4 **proposition on the November 3, 2020, ballot which will repeal Proposition 209 and**
5 **reinstate Affirmative Action in public contracting, hiring, and public education.**

6

7 WHEREAS, Proposition 209, passed in November 1996, ended the use of race and
8 gender conscious decision-making in California in the areas of public employment, public
9 education, and public contracting or procurement, which had a major impact on the public
10 procurement process of state and local governments; and

11 WHEREAS, California has historically demonstrated leadership in advancing social
12 equity issues and yet is one of just nine states that bans affirmative action; and

13 WHEREAS, Women and people of color are paid less, given fewer chances to access
14 higher education, and are denied job opportunities, and Affirmative Action promotes equal
15 opportunity for women and people of color, working to level the playing field by allowing
16 policymakers to consider race and gender—without quotas—when making decisions about
17 contracts, hiring and education; and

18 WHEREAS, Black and Latino children and youth in particular face unique challenges
19 that limit their access to high-quality schools and later good-paying jobs, even when
20 compared to white children who come from families with similar income levels; and

21 WHEREAS, Studies show Asian American students and businesses are better off in
22 states that have equal opportunity policies like affirmative action, and universities that practice
23 affirmative action outside of California have seen greater gains in Asian American enrollment;
24 and

25

1 WHEREAS, According to the Equal Justice Society, minority and women business
2 enterprises (MWBEs), which had been erasing the disparity between their availability and their
3 utilization, were heavily impacted by the passing of Prop 209; and

4 WHEREAS, A study released by the Equal Justice Society found that the passing of
5 Prop 209 resulted in a loss of \$1 billion to \$1.1 billion annually for MWBEs including: (1) the
6 loss of about \$820 million per year in MWBE contracts with the State of California; (2) the loss
7 of about \$200 million per year in MWBE contracts with the City and County of San Francisco,
8 with some of this loss materializing immediately after Proposition 209 and additional losses
9 following the 2004 Coral Construction case, which definitively ended San Francisco's race-
10 conscious procurement program; (3) the loss of about \$30 million per year in MWBE contracts
11 with the City of Oakland; (4) the loss of an estimated \$20 million per year in MWBE contracts
12 with the City of San Jose following the 2000 Hi-Voltage Wire Works case, which definitively
13 ended San Jose's race-conscious contracting program; and

14 WHEREAS, For too long, a wealthy few have worked to divide the country on race and
15 gender issues to their benefit by undermining progress and thereby keeping the best
16 opportunities for themselves and people who share their backgrounds; and

17 WHEREAS, The Supreme Court ruled in UC Regents v. Bakke that racial quotas are
18 unconstitutional, and quotas have not been used in college admissions since 1978; and

19 WHEREAS, Proposition 16 will be subject to strict oversight and will be monitored by
20 California's Department of Justice to ensure it expands opportunity without allowing quotas or
21 discrimination; and

22 WHEREAS, Passing Prop 16 will send a strong message that Californians are against
23 the racist policies and rhetoric of the Trump Administration; and

24 WHEREAS, Prop 16 has the support of Speaker Nancy Pelosi, Governor Gavin
25 Newsom, and Senator Kamala Harris; and has received endorsements from the Planned

1 Parenthood Affiliates of California, the California chapter of the National Association for the
2 Advancement of Colored People (NAACP), Asian Americans Advancing Justice; and is
3 supported by community leaders and organizers including Dolores Huerta, Patrisse Cullors,
4 and Bernice King; now, therefore, be it

5 RESOLVED, That the City and County of San Francisco hereby formally endorses
6 Proposition 16, Opportunities for All, on the November 3, 2020, ballot; and, be it

7 FURTHER RESOLVED, That the City and County of San Francisco go on record in
8 support of Proposition 16, on the November 3, 2020, ballot; and, be it

9 FURTHER RESOLVED, That the City and County of San Francisco urges other
10 municipalities to support Proposition 16 on the November 3, 2020, ballot.

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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.

16

- 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.

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Haney

Subject:

Resolution Supporting California State Proposition 16 - Opportunities for All - Nov 3, 2020, Ballot

The text is listed:

Resolution supporting California State Proposition 16 - Opportunities for All - a proposition on the November 3, 2020 ballot which will repeal Proposition 209 and reinstate Affirmative Action in public contracting, hiring, and public education.

Signature of Sponsoring Supervisor: MATT HANEY