

AMENDED IN ASSEMBLY MARCH 9, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

Assembly Constitutional Amendment

No. 5

Introduced by Assembly Member ~~Quirk-Silva~~ Members *Weber and Gipson*

(Coauthors: Assembly Members *Gonzalez, Jones-Sawyer, and Kamlager*)

(Coauthor: Senator *Mitchell*)

January 18, 2019

Assembly Constitutional Amendment No. 5—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by ~~amending Section 9 of Article IX thereof, relating to the University of California; repealing Section 31 of Article I thereof, relating to government preferences.~~

LEGISLATIVE COUNSEL'S DIGEST

ACA 5, as amended, ~~Quirk-Silva Weber. University of California: Office of the President of the University of California: terms of regents: 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.

~~Existing provisions of the California Constitution establish the University of California as a public trust under the administration of the Regents of the University of California. The California Constitution grants to the regents all the powers necessary or convenient for the effective administration of this public trust. Pursuant to the California Constitution, there are 7 ex officio members of the regents and 18 appointive members appointed by the Governor and approved by the Senate, a majority of the membership concurring. The members of the regents serve 12-year terms.~~

~~This measure would require, on or before October 1 of each year, the Office of the President of the University of California to submit a written report to the regents, the Governor, and the appropriate policy and fiscal committees of the Legislature specifying its receipts and expenditures for the immediately preceding fiscal year. The measure would also require that an appropriation for the Office of the President of the University of California be made only pursuant to an item in the annual Budget Bill relating solely to that office, as specified.~~

~~The measure would also add the Chancellor of the California Community Colleges to the regents as a voting ex officio member, and would provide that the President of the University of California would be a nonvoting, rather than a voting, ex officio member.~~

~~The measure would prohibit the appointment of members of the regents appointed to the board before March 4, 2020, to additional terms after that date, and would further require that members of the regents appointed on and after March 4, 2020, would serve 4-year terms, with the exception of 5 appointive positions on the board that would be filled, through appointments by the Governor, by faculty, students, and classified employees of the university for 2-year terms, as specified.~~

~~The measure would specify the qualifications required of these faculty, student, and classified employee appointees to the board, whose 2-year terms would commence with the expiration of 12-year terms on March 1 of 2020, 2021, and 2022, as prescribed. The measure would repeal, on March 4, 2020, existing authority of the members of the board to appoint a member of the faculty of the university or a student of the university, or both, to the board.~~

~~The measure would prohibit any officer or employee of the university, other than a member of the faculty, from receiving compensation, as~~

defined, that exceeds \$200,000 per year, unless that compensation is approved by a vote of the regents in a public meeting.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 *WHEREAS, Equal opportunity is deeply rooted in the American*
2 *ideals of fairness, justice, and equality. Programs to meet the goals*
3 *of equal opportunity seek to realize these basic values. Equal*
4 *opportunity not only helps individuals, but also helps communities*
5 *in need and benefits our larger society. California’s equal*
6 *opportunity program was upended by the passage of Proposition*
7 *209 in 1996; and*

8 *WHEREAS, Proposition 209, entitled the California Civil Rights*
9 *Initiative, amended Article I of the California Constitution to*
10 *prohibit race- and gender-conscious remedies to rectify the*
11 *underutilization of women and people of color in public*
12 *employment, as well as public contracting and education; and*

13 *WHEREAS, Proposition 209 invalidated a series of laws that*
14 *had been enacted by the California Legislature over the 20 years*
15 *prior to it that required state agencies to eliminate traditional*
16 *patterns of segregation and exclusion in the workforce, to increase*
17 *the representation of women and minorities in the state service by*
18 *identifying jobs for which their employment was underrepresented*
19 *due to discrimination, and to develop action plans to remedy such*
20 *underrepresentation without effectuating quota systems; and*

21 *WHEREAS, Proposition 209 also overshadowed other landmark*
22 *civil rights and antidiscrimination laws. In 1959, after a 37-year*
23 *campaign by labor and civil rights groups, the Unruh Civil Rights*
24 *Act was passed, which was the forerunner of the Civil Rights Act*
25 *of 1964; and*

26 *WHEREAS, As a result of the passage of Proposition 209,*
27 *women and people of color continue to face discrimination and*
28 *disparity in opportunities to participate in numerous forms of*
29 *association and work that are crucial to the development of talents*
30 *and capabilities that enable people to contribute meaningfully to,*
31 *and benefit from, the collective possibilities of national life; and*

32 *WHEREAS, The State of California has provided employment*
33 *opportunities for people of color and women of all races. However,*
34 *lingering, and even increasing, disparity still exists, particularly*

1 *for Black Americans, Latino Americans, and women, and should*
2 *be rectified; and*

3 *WHEREAS, Proposition 209 has impeded California's*
4 *continuing interest in supporting the equal participation of women*
5 *in the workforce and in public works projects, in addressing the*
6 *historical and present manifestations of gender bias, and in*
7 *promulgating policies to enforce antidiscrimination in the*
8 *workplace and on public projects; and*

9 *WHEREAS, In the wake of Proposition 209, California saw*
10 *stark workforce diversity reductions for people of color and women*
11 *in public contracting and in public education. Studies show that*
12 *more diverse workforces perform better financially and are*
13 *significantly more productive and focused; and*

14 *WHEREAS, Since the passage of Proposition 209, the state's*
15 *minority-owned and women-owned business enterprise programs*
16 *have been decimated. A 2016 study conservatively estimates that*
17 *the implementation of Proposition 209 cost women and people of*
18 *color over \$1,000,000,000 annually in lost contract awards. Most*
19 *procurement and subcontracting processes remain effectively*
20 *closed to these groups due to the changes brought on by*
21 *Proposition 209; and*

22 *WHEREAS, Women are vastly underrepresented among firms*
23 *receiving public contracts and the dollars awarded to certified*
24 *women-owned business enterprises fell by roughly 40 percent,*
25 *compared to levels before Proposition 209. In addition, only*
26 *one-third of certified minority business enterprises in California's*
27 *transportation construction industry are still in operation today,*
28 *compared to 20 years ago; and*

29 *WHEREAS, Women, particularly women of color, continue to*
30 *face unequal pay for equal work. White women are paid 80 cents*
31 *to every dollar paid to white men doing the same work. Black*
32 *women are paid 60 cents for every dollar paid to white men doing*
33 *the same work and would theoretically have to work an extra seven*
34 *months every year to overcome that differential. This persistent*
35 *gender wage gap continues to harm women, their families, and*
36 *communities; and*

37 *WHEREAS, Despite a booming economy with almost full*
38 *employment, a persistent racial wealth gap remains rooted in*
39 *income inequality. Improving minority access to educational and*

1 *labor market opportunity reduces the wealth gap and strengthens*
2 *the economy; and*

3 *WHEREAS, Proposition 209 has had a devastating impact on*
4 *minority equal opportunity and access to California’s publicly*
5 *funded institutions of higher education. This violates the spirit of*
6 *the California Master Plan for Higher Education by making it*
7 *more difficult for many students to obtain an affordable and*
8 *accessible high quality public education. While federal law allows*
9 *schools to use race as a factor when making admissions decisions,*
10 *California universities are prohibited by Proposition 209 from*
11 *engaging in targeted outreach and extra efforts to matriculate*
12 *high-performing minority students. This reduces the graduation*
13 *rates of students of color and, in turn, contributes to the diminution*
14 *of the “pipeline” of candidates of color for faculty positions; and*

15 *WHEREAS, Since the passage of Proposition 209, diversity*
16 *within public educational institutions has been stymied. Proposition*
17 *209 instigated a dramatic change in admissions policy at the*
18 *University of California, with underrepresented group enrollment*
19 *at the Berkeley and Los Angeles campuses of the University of*
20 *California immediately falling by more than 60 percent and*
21 *systemwide underrepresented group enrollment falling by at least*
22 *12 percent. Underrepresented group high school graduates faced*
23 *substantial long-term declines in educational and employment*
24 *outcomes as a result of these changes; and*

25 *WHEREAS, Among California high school graduates who apply*
26 *to the University of California, passage of Proposition 209 has*
27 *led to a decreased likelihood of earning a college degree within*
28 *six years, a decreased likelihood of ever earning a graduate degree,*
29 *and long-run declines in average wages and the likelihood of*
30 *earning high wages measured by California standards. The*
31 *University of California has never recovered the same level of*
32 *diversity that it had before the loss of affirmative action nearly 20*
33 *years ago, a level that, at the time, was widely considered to be*
34 *inadequate to meet the needs of the state and its young people*
35 *because it did not achieve parity with the state’s ethnic*
36 *demographics; and*

37 *WHEREAS, The importance of diversity in educational settings*
38 *cannot be overstated. The Supreme Court of the United States*
39 *outlined the benefits that arise from diversity, as follows, “the*
40 *destruction of stereotypes, the promotion of cross-racial*

1 *understanding, the preparation of a student body for an*
2 *increasingly diverse workforce and society, and the cultivation of*
3 *a set of leaders with legitimacy in the eyes of the citizenry”;* and

4 *WHEREAS, Federal courts continue to reaffirm the value of*
5 *diversity in favor of race conscious admissions, as exemplified by*
6 *United States District Judge Allison D. Burroughs who stated,*
7 *“race conscious admissions programs that survive strict scrutiny*
8 *have an important place in society and help ensure that colleges*
9 *and universities can offer a diverse atmosphere that fosters*
10 *learning, improves scholarship, and encourages mutual respect*
11 *and understanding. Further, Judge Burroughs recognized that*
12 *there are no race-neutral alternatives that would allow a university*
13 *to achieve an adequately diverse student body while still*
14 *perpetuating its standards for academic and other forms of*
15 *excellence; and*

16 *WHEREAS, It is the intent of the Legislature that California*
17 *remedy discrimination against, and underrepresentation of, certain*
18 *disadvantaged groups in a manner consistent with the United*
19 *States Constitution and allow gender, racial, and ethnic diversity*
20 *to be considered among the factors used to decide college*
21 *admissions and hiring and contracting by government institutions;*
22 *and*

23 *WHEREAS, It is further the intent of the Legislature that*
24 *California transcend a legacy of unequal treatment of marginalized*
25 *groups and promote fairness and equal citizenship by affording*
26 *the members of marginalized groups a fair and full opportunity*
27 *to be integrated into state public institutions that advance upward*
28 *mobility, pay equity, and racial wealth gap reduction; now,*
29 *therefore be it*

30 *Resolved by the Assembly, the Senate concurring, That the*
31 *Legislature of the State of California at its 2019–20 Regular*
32 *Session commencing on the third day of December 2018, two-thirds*
33 *of the membership of each house concurring, hereby proposes to*
34 *the people of the State of California, that the Constitution of the*
35 *State be amended as follows:*

36 *That Section 31 of Article I thereof is repealed.*

37 ~~SEC. 31. (a) The State shall not discriminate against, or grant~~
38 ~~preferential treatment to, any individual or group on the basis of~~
39 ~~race, sex, color, ethnicity, or national origin in the operation of~~
40 ~~public employment, public education, or public contracting.~~

1 ~~(b) This section shall apply only to action taken after the~~
2 ~~section's effective date.~~

3 ~~(c) Nothing in this section shall be interpreted as prohibiting~~
4 ~~bona fide qualifications based on sex which are reasonably~~
5 ~~necessary to the normal operation of public employment, public~~
6 ~~education, or public contracting.~~

7 ~~(d) Nothing in this section shall be interpreted as invalidating~~
8 ~~any court order or consent decree which is in force as of the~~
9 ~~effective date of this section.~~

10 ~~(e) Nothing in this section shall be interpreted as prohibiting~~
11 ~~action which must be taken to establish or maintain eligibility for~~
12 ~~any federal program, where ineligibility would result in a loss of~~
13 ~~federal funds to the State.~~

14 ~~(f) For the purposes of this section, "State" shall include, but~~
15 ~~not necessarily be limited to, the State itself, any city, county, city~~
16 ~~and county, public university system, including the University of~~
17 ~~California, community college district, school district, special~~
18 ~~district, or any other political subdivision or governmental~~
19 ~~instrumentality of or within the State.~~

20 ~~(g) The remedies available for violations of this section shall~~
21 ~~be the same, regardless of the injured party's race, sex, color,~~
22 ~~ethnicity, or national origin, as are otherwise available for~~
23 ~~violations of then-existing California antidiscrimination law.~~

24 ~~(h) This section shall be self-executing. If any part or parts of~~
25 ~~this section are found to be in conflict with federal law or the~~
26 ~~United States Constitution, the section shall be implemented to~~
27 ~~the maximum extent that federal law and the United States~~
28 ~~Constitution permit. Any provision held invalid shall be severable~~
29 ~~from the remaining portions of this section.~~

30 ~~*Resolved by the Assembly, the Senate concurring, That the*~~
31 ~~*Legislature of the State of California at its 2019-20 Regular*~~
32 ~~*Session commencing on the third day of December 2018,*~~
33 ~~*two-thirds of the membership of each house concurring, hereby*~~
34 ~~*proposes to the people of the State of California that the*~~
35 ~~*Constitution of the State be amended as follows:*~~

36 ~~That Section 9 of Article IX thereof is amended to read:~~

37 ~~Sec. 9. (a) (1) The University of California shall constitute a~~
38 ~~public trust, to be administered by the existing corporation known~~
39 ~~as "The Regents of the University of California," with full powers~~
40 ~~of organization and government, subject only to such legislative~~

1 control as may be necessary to ensure the security of its funds and
2 compliance with the terms of the endowments of the university
3 and such competitive bidding procedures as may be made
4 applicable to the university by statute for the letting of construction
5 contracts, sales of real property, and purchasing of materials, goods,
6 and services. The corporation shall be in form a board composed
7 of seven voting ex officio members, who shall be the Governor,
8 the Lieutenant Governor, the Speaker of the Assembly, the
9 Superintendent of Public Instruction, the Chancellor of the
10 California Community Colleges, the president and the vice
11 president of the alumni association of the university, one nonvoting
12 ex officio member, who shall be the president of the university,
13 and 18 appointive members appointed by the Governor and
14 approved by the Senate, a majority of the membership concurring.
15 The terms of appointive members shall commence and terminate
16 on March 1 of the beginning and ending years of their terms.

17 (2) On or before October 1 of each year, the Office of the
18 President of the University of California shall submit a written
19 report to the regents, the Governor, and the appropriate policy and
20 fiscal committees of the Legislature specifying its receipts and
21 expenditures for the immediately preceding fiscal year. An
22 appropriation for the Office of the President of the University of
23 California shall be made only pursuant to an item in the annual
24 Budget Bill relating solely to that office, and no other moneys
25 appropriated by the Legislature shall be transferred or otherwise
26 made available to that office.

27 (b) (1) The terms of the members appointed before March 4,
28 2020, shall be 12 years. No member appointed by the Governor
29 before March 4, 2020, may be appointed to the board for an
30 additional term after the completion of his or her term.

31 (2) Except as provided in paragraph (3), the terms of members
32 appointed on and after March 4, 2020, shall be four years. A
33 member appointed on or after March 4, 2020, may be appointed
34 for up to two additional terms after the completion of his or her
35 first term on the board.

36 (3) (A) For a vacancy occurring upon the expiration of a term
37 on March 1, 2020, the Governor shall appoint, and submit for
38 consideration by the Senate, a faculty member of the University
39 of California chosen from a list of four candidates submitted to
40 the Governor by the Academic Senate of the University of

1 California, who, upon approval by the Senate, shall serve a
2 two-year term ending on March 1, 2022. This position shall
3 subsequently be filled by persons appointed in the same manner
4 as specified in this subparagraph, serving two-year terms.

5 (B) For a vacancy occurring upon the expiration of a term on
6 March 1, 2020, the Governor shall appoint, and submit for
7 consideration by the Senate, an undergraduate student of the
8 University of California with at least sophomore standing, chosen
9 from a list of two to five candidates submitted to the Governor by
10 the governing board of a statewide student organization that
11 represents students of the university, who, upon approval by the
12 Senate, shall serve a two-year term ending on March 1, 2022. This
13 position shall subsequently be filled by persons appointed in the
14 same manner as specified in this subparagraph, serving two-year
15 terms. A person who serves on the board pursuant to an
16 appointment made under this subparagraph shall have voting rights
17 on the board only on and after the first March 1 that occurs after
18 the date he or she becomes a member of the board.

19 (C) For a vacancy occurring upon the expiration of a term on
20 March 1, 2021, the Governor shall appoint, and submit for
21 consideration by the Senate, a faculty member of the University
22 of California chosen from a list of four candidates submitted to
23 the Governor by the Academic Senate of the University of
24 California, who, upon approval by the Senate, shall serve a
25 two-year term ending on March 1, 2023. This position shall
26 subsequently be filled by persons appointed in the same manner
27 as specified in this subparagraph, serving two-year terms.

28 (D) For a vacancy occurring upon the expiration of a term on
29 March 1, 2021, the Governor shall appoint, and submit for
30 consideration by the Senate, a graduate student of the University
31 of California, who, upon approval by the Senate, shall serve a
32 two-year term ending on March 1, 2023. This position shall
33 subsequently be filled by persons appointed in the same manner
34 as specified in this subparagraph, serving two-year terms. A person
35 who serves on the board pursuant to an appointment made under
36 this subparagraph shall have voting rights on the board only on
37 and after the first March 1 that occurs after the date he or she
38 becomes a member of the board.

39 (E) For a vacancy occurring upon the expiration of a term on
40 March 1, 2022, the Governor shall appoint, and submit for

1 consideration by the Senate, a classified employee of the University
2 of California chosen from a list of three candidates submitted to
3 the Governor by the exclusive representatives of classified
4 employees of the University of California who, upon approval by
5 the Senate, shall serve a two-year term ending on March 1, 2024.
6 This position shall subsequently be filled by persons appointed in
7 the same manner as specified in this subparagraph, serving
8 two-year terms.

9 (4) In case of any vacancy, the term of office of the appointee
10 to fill that vacancy, who shall be appointed by the Governor and
11 approved by the Senate, a majority of the membership concurring,
12 shall be for the balance of the term for which that vacancy exists.

13 (e) Before March 4, 2020, the members of the board may, in
14 their discretion, following procedures established by them and
15 after consultation with representatives of faculty and students of
16 the university, including appropriate officers of the academic senate
17 and student governments, appoint to the board either or both of
18 the following persons as members with all rights of participation:
19 a member of the faculty at a campus of the university or of another
20 institution of higher education, or a person enrolled as a student
21 at a campus of the university for each regular academic term during
22 his or her service as a member of the board. Any person so
23 appointed shall serve for not less than one year commencing on
24 July 1, provided that no member appointed pursuant to this
25 subdivision shall serve on or after July 1, 2021.

26 (d) Regents shall be able persons broadly reflective of the
27 economic, cultural, and social diversity of the State, including
28 ethnic minorities and women. However, it is not intended that
29 formulas or specific ratios be applied in the selection of regents.

30 (e) In the selection of the regents, the Governor shall consult
31 an advisory committee composed as follows: the Speaker of the
32 Assembly and two public members appointed by the Speaker, the
33 President pro Tempore of the Senate and two public members
34 appointed by the Senate Committee on Rules, two public members
35 appointed by the Governor, the chairperson of the regents of the
36 university, an alumnus or alumna of the university chosen by the
37 alumni association of the university, a student of the university
38 chosen by the Council of Student Body Presidents, and a member
39 of the faculty of the university chosen by the academic senate of
40 the university. Public members shall serve for four years, except

1 that one each of the initially appointed members selected by the
2 Speaker of the Assembly, the President pro Tempore of the Senate,
3 and the Governor shall be appointed to serve for two years; student,
4 alumni, and faculty members shall serve for one year and may not
5 be regents of the university at the time of their service on the
6 advisory committee.

7 (f) (1) The Regents of the University of California shall be
8 vested with the legal title and the management and disposition of
9 the property of the university and of property held for its benefit.
10 The regents shall have the power to take and hold, either by
11 purchase or by donation, or gift, testamentary or otherwise, or in
12 any other manner, without restriction, all real and personal property
13 for the benefit of the university or incidentally to its conduct.
14 However, sales of university real property shall be subject to such
15 competitive bidding procedures as may be provided by statute.

16 (2) The corporation shall also have all the powers necessary or
17 convenient for the effective administration of its trust, including
18 the power to sue and to be sued, to use a seal, and to delegate to
19 its committees or to the faculty of the university, or to others, such
20 authority or functions as it may deem wise.

21 (3) No officer or employee of the university, other than a
22 member of the faculty, shall receive compensation that exceeds
23 two hundred thousand dollars (\$200,000) per year unless that
24 compensation is approved by vote of the regents in a public
25 meeting. For purposes of this paragraph, "compensation" includes
26 salary, retirement benefits and other benefits, perquisites, severance
27 payments, and any other form of compensation.

28 (4) The regents shall receive all funds derived from the sale of
29 lands pursuant to the act of Congress of July 2, 1862, and any
30 subsequent acts amendatory thereof. The university shall be entirely
31 independent of all political or sectarian influence and kept free
32 therefrom in the appointment of its regents and in the
33 administration of its affairs, and no person shall be debarred
34 admission to any department of the university on account of race,
35 religion, ethnic heritage, or sex.

36 (g) Meetings of the Regents of the University of California shall
37 be public, with exceptions and notice requirements as may be
38 provided by statute.

O