

AMENDED IN ASSEMBLY JUNE 14, 2023

AMENDED IN ASSEMBLY MAY 18, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

Assembly Constitutional Amendment

No. 7

Introduced by Assembly Member Jackson
(Coauthors: Assembly Members ~~Bonta~~ Alvarez, ~~Bonta~~, and Weber)

February 16, 2023

Assembly Constitutional Amendment No. 7—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 31 of Article I thereof, relating to government preferences.

LEGISLATIVE COUNSEL'S DIGEST

ACA 7, as amended, Jackson. Government preferences: ~~interventions~~ or programs: exceptions.

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 provide that, subject to approval by the Governor pursuant to specified procedures, the state may use state moneys to fund research-based, or research-informed, and culturally specific ~~interventions~~ or programs in any industry if those ~~interventions~~ or

programs are established or otherwise implemented by the state for purposes of increasing the life expectancy of, improving educational outcomes for, or lifting out of poverty specific groups based on race, color, ethnicity, national origin, or marginalized genders, sexes, or sexual orientations.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 *Resolved by the Assembly, the Senate concurring,* That the
2 Legislature of the State of California at its 2023–24 Regular
3 Session commencing on the fifth day of December 2022, two-thirds
4 of the membership of each house concurring, hereby proposes to
5 the people of the State of California, that the Constitution of the
6 State be amended as follows:

7 That Section 31 of Article I thereof is amended to read:

8 SEC. 31. (a) (1) Except as provided in paragraph (2), the State
9 shall not discriminate against, or grant preferential treatment to,
10 any individual or group on the basis of race, sex, color, ethnicity,
11 or national origin in the operation of public employment, public
12 education, or public contracting.

13 (2) (A) Notwithstanding paragraph (1) but subject to approval
14 by the Governor pursuant to the procedures in subparagraph (B),
15 the State may use state moneys to fund research-based, or
16 research-informed, and culturally specific ~~interventions or~~ programs
17 in any industry, including, but not limited to, public employment,
18 public education, and public contracting, if those ~~interventions or~~
19 programs are established or otherwise implemented by the State
20 for purposes of increasing the life expectancy of, improving
21 educational outcomes for, or lifting out of poverty specific groups
22 based on race, color, ethnicity, national origin, or marginalized
23 genders, sexes, or sexual orientations.

24 (B) The Governor shall review and approve or reject an
25 application submitted to the Governor for purposes of subparagraph
26 (A) within 60 days of receiving the application. If the Governor
27 denies the application, the Governor shall notify the applicant and
28 publish on their internet website a message explaining the basis
29 for the denial.

30 (b) This section shall apply only to action taken after the
31 section's effective date.

1 (c) This section shall not be interpreted as prohibiting bona fide
2 qualifications based on sex which are reasonably necessary to the
3 normal operation of public employment, public education, or public
4 contracting.

5 (d) This section shall not be interpreted as invalidating any court
6 order or consent decree which is in force as of the effective date
7 of this section.

8 (e) This section shall not be interpreted as prohibiting action
9 which must be taken to establish or maintain eligibility for any
10 federal program, where ineligibility would result in a loss of federal
11 funds to the State.

12 (f) For the purposes of this section, the following definitions
13 apply:

14 (1) “Culturally specific ~~intervention or~~ program” means a
15 program or practice that infuses the history, language, ancestry,
16 traditions, and rituals of a specific race, color, ethnicity, national
17 origin, religion, gender, sex, or sexual orientation into its design
18 and implementation.

19 (2) “Disaggregated data” means data that has been broken down
20 into detailed subcategories within ethnic groups, age, sexual
21 orientation, and gender identity, with the intent of identifying the
22 unique differences within groups and addressing more concentrated
23 disparities facing specific subgroups.

24 (3) “Research-based ~~intervention or~~ program” means a program
25 or practice that has been tested in a manner that meets all of the
26 following conditions:

27 (A) The test is conducted with a single randomized evaluation,
28 a single statistically controlled evaluation, or both.

29 (B) The test is inclusive and representative of the diverse
30 populations in the state, based on the most recent census data.

31 (C) The test demonstrates sustained desirable outcomes or the
32 weight of the evidence from a systemic review of the test supports
33 sustained outcomes.

34 (4) “Research-informed ~~intervention or~~ program” means a
35 program or practice that exercises the explicit and judicious use
36 of the best available evidence from multiple sources that use
37 disaggregated data to increase the likelihood of a favorable
38 outcome.

39 (5) “State” shall include, but is not limited to, the State itself,
40 any city, county, city and county, public university system,

1 including the University of California, community college district,
2 school district, special district, or any other political subdivision
3 or governmental instrumentality of or within the State.

4 (6) “State moneys” means all money, bonds, and securities
5 possessed by the State itself.

6 (g) The remedies available for violations of this section shall
7 be the same, regardless of the injured party’s race, sex, color,
8 ethnicity, or national origin, as are otherwise available for
9 violations of then-existing California antidiscrimination law.

10 (h) This section shall be self-executing. If any part or parts of
11 this section are found to be in conflict with federal law or the
12 United States Constitution, the section shall be implemented to
13 the maximum extent that federal law and the United States
14 Constitution permit. Any provision held invalid shall be severable
15 from the remaining portions of this section.