Date of Hearing: April 22, 2025

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Mike Fong, Chair
AB 7 (Bryan) – As Introduced December 2, 2024

[Note: This bill is double referred to the Assembly Committee on Judiciary and will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Postsecondary education: admissions preference: descendants of slavery.

SUMMARY: States that the California State University (CSU), the University of California (UC), independent institutions of higher education, and private postsecondary educational institutions may consider providing a preference in admissions to an applicant who is a descendant of slavery, as defined, to the extent it does not conflict with federal law. Specifically, **this bill**:

1) Authorizes the CSU, the UC, and independent institutions of higher education, and private postsecondary institutions, to consider providing a preference in admissions to an applicant who is a descendant of slavery, to the extent that it does not conflict with federal law.

2) Defines "descendant of slavery" for purposes of this measure, to mean a person who, based on lineage, is a descendant of a chattel enslaved person of American chattel slavery.

EXISTING LAW:

Federal law.

1) Provides that no state "shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." This article is also known as the *Equal Protection Clause* (U.S. Constitution, Article 14).

2) Provides that "the use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body is not prohibited by the Equal Protection Clause" (*Grutter v. Bollinger*, 539 U.S. 306 (2003)).

3) Prohibits the use of racial quotas in the admission decisions, and provides that the use of race in admissions decision must be individualized, narrowly tailored, and cannot be decisive. (*Regents of the University of California v. Bakke*, (438 U.S. 265 (1978)) and *Gratz v. Bollinger*, 539 U.S. 244 (2003))

4) Decrees that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance except for specified circumstances including membership of fraternities and sororities (20 USC Sections 1681-1688 (Title IX)).

5) Prohibits discrimination on the basis of race, color, or/and national origin in programs and activities receiving federal assistance (42 USC 2000d, et seq. (Title VI of the Civil Rights Act of 1964)).

6) Prohibits discrimination in employment based on race, color, religion, sex or national origin and prohibits retaliation against employees who invoke their rights under Title VII of the Civil Rights Act of 1964 (42 USC 2000e (Title VII of the Civil Rights Act)).

State law.

1) Prohibits the State, in the operation of public employment, public education, or public contracting, from discriminating against or granting preferential treatment to any individual or any group on the basis of race, sex, color, ethnicity, national origin. Stipulates the implementation is to comply with federal laws and the U.S. Constitution. Defines the "State" to include, but not necessarily be limited to, the State itself, any city, county, city and county, public university system, including the UC, California Community College (CCC) district, school district, special district, or any other political subdivision or governmental instrumentality of or within the State. Stipulates that nothing in the section is to be interpreted as:

   a) Prohibiting bona fide qualifications based on sex, which are reasonably necessary to the normal operation of public employment, public education, or public contracting;

   b) Invalidating any court order or consent decree, which is in force as the effective date of the section; and,

   c) Prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State.

   For the purposes of this section, the remedies available for violations of this section must be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of then-existing California antidiscrimination law.

   Stipulates that this section must be self-executing. If any part or parts of this section are found to be in conflict with federal law or the U.S. Constitution, the section must be implemented to the maximum extent that federal law and the U.S. Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section (CA Constitution Article I Section 31 (also known as Proposition 209)).

2) Establishes the CSU, under the administration of the CSU Trustees, the UC, under the administration of the UC Regents of, the CCC, under the administration of the CCC Board of Governors, and independent institutions of higher education, as defined, as four segments of postsecondary education in the state (Education Code (EC) Section 66010.4, et seq.).

3) Stipulates that no person is to be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any characteristic listed or defined, including immigration status. States the prohibition on the discrimination on the basis of the listed characteristics is extended to

programs or activities conducted by any postsecondary education institution that receives or benefits from, state financial assistance or enrolls students who receive state financial aid (EC Section 66270).

FISCAL EFFECT: Unknown

COMMENTS: *Purpose of the measure*. According to the author, "for decades, universities gave preferential admission treatment to legacy donors and their family members, while ignoring admission outcomes for applicants directly impacted by legacies of harm and exclusion. These intentional decisions have resulted in stark and measurable achievement differences that have documented ties back to slavery in the United States."

The author further states that, "AB 7 provides a legal mechanism for California's colleges and universities to address educational inequities tied directly to slavery and its lasting effects. By allowing institutions to consider an applicant's lineage as a factor in admissions decisions, the bill aims to increase institutional access for students who research has shown still experience the greatest educational attainment and achievement disadvantages."

Education attainment levels of Black Students in the State. The Campaign for College Opportunity released a report in February 2019, entitled, *State of Higher Education for Black Californians*. The report noted several facts, notably:

1) California high schools graduate Black students at lower rates than all other racial/ethnic groups and have failed to address the significantly lower percentages of Black students who are offered and complete the college preparatory curriculum - a 17-percentage point gap in A-G completion between Black and White students exists.

2) Of the 25,000 Black high school graduates in 2017, only 9,000 completed the coursework necessary to be eligible for California's public four-year universities.

3) CCC transfer only 3% of Black students within two years, and only 35% within six years.

4) Sixty-three percent of Black community college students do not earn a degree, certificate, or transfer within six years.

5) Fifty-seven percent of Black freshmen at CSU do not complete a degree within six years and only 9% do so in four years.

6) Ninety-three percent of Black for-profit college students do not complete a degree within six years.

7) Almost half of all Black students who attended college left without a degree.

Further, the California Task Force to Study and Develop Reparation Proposals for African Americans, released its final report, commonly referenced as, *The California Reparations Report*, on June 29, 2023. The report, in part, found that in recent years, the academic achievement gap between all student groups has steadily decreased, except for the gap between

Black and White students, which has widened. The report contends said data point confirms the ongoing existence of "deeply-rooted racial disparities in the nation's education system." Additionally, the report found that there was a 60% decline in Black student enrollment at America's most selective colleges and universities from the span of 2000-2020.

Proposition 209 and 16. On November 5, 1996, California voters passed (54.55%) Proposition 209, which, in part, eliminated the consideration of race, in public education admissions, regardless of long-standing practices institutions of higher education may have had in place.

Since 1996, there have been various legislative attempts to either repeal or reduce the scope of Proposition 209 on public contracting, public education, and public employment. Of the attempts, one successfully made it onto the ballot. In 2020, ACA 5 (Shirley Weber), Chapter 23, Statues of 2020, (which became Proposition 16), sought to repeal the provisions of Proposition 209. Proposition 16 was deemed an opportunity for California to reintroduce affirmative action by allowing policymakers to consider race and gender–without quotas–when making decisions about contracts, hiring and education to eliminate systemic discrimination and remedy past harm.

Proposition 16 failed with more than the majority (57.2%) of Californians voting to uphold the existing ban on discrimination and preferential treatment in State operations of public employment, public contracting, and public education.

Committee comments. As drafted, this measure authorizes the CSU, the UC, and independent institutions of higher education, and private postsecondary institutions, to consider providing a preference in admissions to an applicant who is a descendant of slavery, to the extent that it does not conflict with federal law.

Though the language of this measure is permissive, it remains unclear how it would be fully implemented. Several policy questions exist - these questions include, but are not limited to, the following:

1) How will potentially eligible applicants prove they are descendants of chattel enslaved people of American chattel slavery?

2) How many generations do applicants have to go back in order to be eligible?

3) Additionally, what documentation will potentially eligible applicants need to present when seeking to benefit from the preference in admissions?

4) How will campus enrollment offices know how to ascertain if provided documents are in fact authentic?

Moving forward, the author may wish to work with appropriate stakeholders in order to provide specificity in how the preference in admission will be implemented.

In 2023, the U.S. Supreme Court determined the admissions programs at Harvard College and the University of North Carolina violated the equal protections clause of the 14th Amendment of

the U.S. Constitution when colleges considered race as a criteria in admission decisions.[1] The decision effectively ended affirmative action in admissions across the United States; except for in California, where Proposition 209 already prohibited the public university systems from using race as a criteria for admissions. However, it is presently unclear if this measure violates the provisions of state and federal law.

According to the Pacific Legal Foundation, "AB 7's use of race and ancestry to provide an admission preference would be subject to strict scrutiny. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution states that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Likewise, the California Constitution provides, "A person may not be . . . denied equal protection of the laws." Cal. Const. art. I, § 7(a). The Supreme Court was clear in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 208 (2023), that the Constitution rarely tolerates race-based state action. And when it does, it is only within the confines of narrow restrictions. *Id.* at 214. AB 7 is no exception."

Arguments in support. According to the UC Student Association (UCSA), "AB 7 is a critical step toward equity and restorative justice, one that acknowledges and seeks to correct historical and systemic barriers that have impacted descendants of slavery, a lineage that has disproportionately hindered college access for African-American communities and Black students across generations due to the legacy of slavery, Jim Crow segregation laws and institutionalized racial discrimination."

Additionally, UCSA states that, "for many students, pursuit of a higher education is simply out of reach, oftentimes due to factors out of their control: Lack of access to college advisors, little to no support with A-G completion, dual enrollment or FAFSA, and affordability. Obstacles that threaten students' dreams of their college and career goals are disturbingly more pronounced for Black students, who are enrolled in California's public colleges and universities at disproportionately lower rates due to long-standing inequities in our K-12 and higher education systems."

Arguments in opposition. According to the Californians for Equal Rights Foundation (CFER), "California State Constitution Article I Section 31(a) was established by the passage of Proposition 209, or the California Civil Rights Initiative in 1996. It unequivocally states: "The state shall not discriminate against, or grant 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." This principle was overwhelmingly reaffirmed on the November 2020 ballot when 57.2% of California voters rejected Proposition 16, which would have repealed Prop 209."

The CFER contends that, "AB 7's implementation would certainly lead to *de facto* racial preferences without facilitating any meaningful changes to ameliorate structural problems at the K-12 level including declines in academic performance and the persistent achievement gaps among different demographic groups."

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[1] https://www.scotusblog.com/case-files/cases/students-for-fair-admissions-inc-v-president-fellows-of-harvard-college/

Prior legislation. AB 679 (Ting), Chapter 514, Statutes of 2019, in part, requires, by June 30 of each year from 2021 to 2024, the CSU Trustees, the UC Regents, and the appropriate governing bodies of each independent institution of higher education that is a qualifying institution as defined under the Cal Grant Program that provides preferential treatment in admissions to applicants with a relationship to donors or alumni, to annually report information about those admissions to the Legislature.

Senate Constitutional Amendment 5 (Hernández, 2013) was introduced which proposed a constitutional amendment to be placed before the voters that removed provisions implemented through the enactment of Proposition 209 relating to public education. This measure was passed by the Senate (27-9), and after submittal to the Assembly for consideration, was ordered (i.e., returned) to the Senate without a vote of the Assembly. SCA 5 was then held in the Senate without further consideration by the Legislature; thus, failed to be passed.

Senate Bill 185 (Hernández, 2011) stated legislative intent to authorize the CSU and the UC to consider race, gender, ethnicity and national origin, geographic origin, and household income, along with other relevant factors, in undergraduate and graduate admissions, as specified, and required the CSU and requests the UC to report on the implementation of these provisions to the Legislature and Governor by November 1, 2013, as specified. This measure was vetoed by the Governor who stated:

> *"I wholeheartedly agree with the goal of this legislation. Proposition 209 should be interpreted to allow UC and CSU to consider race and other relevant factors in their admissions policies to the extent permitted under the Fourteenth Amendment of the United States Constitution. In fact, I have submitted briefs in my capacities as both Governor and Attorney General strongly urging the courts to adopt such an interpretation.*
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> *"But while I agree with the goal of this legislation, I must return the bill without my signature. Our constitutional system of separation of powers requires that the courts -- not the Legislature -- determine the limits of Proposition 209. Indeed, there is already a court case pending in the 9th Circuit against the State and the UC on the same issues addressed in this bill. Signing this bill is unlikely to impact how Proposition 209 is ultimately interpreted by the courts; it will just encourage the 209 advocates to file more costly and confusing lawsuits."*

Assembly Constitutional Amendment 23 (Hernández, 2009) established an exemption from the California Constitutional prohibition granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in public education for the purposes of implementing student recruitment and selection programs at public postsecondary education institutions that are permissible under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. This measure passed the Assembly Committee on Higher Education (6-1), but subsequently received no further action.

Assembly Bill 1452 (Núñez, 2005) authorized the UC and CSU to consider race, ethnicity, national origin, geographic origin, and household income, along with other relevant factors, in undergraduate and graduate admissions, so long as no preference is given and such consideration takes place if and when the university, campus, college, school, or program is attempting to

obtain educational benefit through the recruitment of a multi-factored, diverse student body. This bill was subsequently amended to address an unrelated subject.

Assembly Bill 2387 (Firebaugh, 2003) was substantially similar to AB 1452 prior to that bill being amended to address an entirely different subject. Assembly Bill 2387 was vetoed by the Governor who stated that the provisions of this bill would likely be ruled as unconstitutional.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Regional Health Inequity Initiative
California Pan - Ethnic Health Network
Culver City Democratic Club
PRC/Black Leadership Council
Santa Monica Democratic Club
University of California Student Association
Western Center on Law & Poverty, Inc.

Opposition

Californians for Equal Rights Foundation
Pacific Legal Foundation
San Diego Asian Americans for Equality
Individuals (8)

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