



CALIFORNIA COMMUNITY COLLEGES, THE BAN ON AFFIRMATIVE ACTION, AND THE RESTRICTIONS TO IMPROVING RACIAL EQUITY

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Much of the debate about Proposition 16 has focused on admissions to University of California campuses and less about the harmful effects the twenty-five-year ban on affirmative action has had on California Community Colleges and its 2.1 million students. If anything, the outdated law known as Proposition 209 restricted progress towards the 1992 Student Equity Policy and its intent to address barriers to success for students of color. It has all but silenced any solutions-oriented dialogue on race and racism, hampered the hiring of faculty and administrators of color, and restricted policymakers' ability to create targeted programs to increase transfer and completion rates.

California voters this November have the opportunity to restore affirmative action. Since 1996, the restrictive law known as Proposition 209 has limited equity advocates' abilities to address barriers to success for women and people of color. The outdated law has restricted higher education institutions from naming and addressing the role of race and racism in college access and student outcomes by enacting race-neutral policies in California. Since 1996, the ban on affirmative action has handcuffed policymakers, equity advocates and institutional leaders from tackling the root causes of inequality experienced in access, persistence, transfer, and completion across California's educational systems.

In studying the dilution of race in policymaking, we found the ban on affirmative action adversely impacted the ability of California Community Colleges to tackle persistent inequities faced by racially minoritized students. Particularly, institutional leaders experienced a chilling effect on racial discourse and the rhetoric of Proposition 209 led to reluctance, if not resistance, to speaking and explicitly addressing longstanding and persistent racial inequities. If you can't talk about or act on racial disparities, there is no opportunity to eliminate them.

Proposition 16 will be on the ballot in California this November and voters will have the opportunity to restore affirmative action and open the door to have racial discourse again. Restoring affirmative action will allow policies to be intentionally designed and implemented in ways that acknowledge structural forms of racism that marginalize people of color. It will rectify the damage inflicted by the institutionalization of race-evasive rhetoric and policy within hiring practices and university admissions standards. Amid recent national conversations surrounding the need to dismantle systemic racism, Proposition 16 will grant voters in California the opportunity to allow policymakers and institutional leaders to openly discuss the role of race and racism in our public education systems.

As Californians consider to reinstate affirmative action, it is critical that education leaders and interested stakeholders have a shared understanding of the wide-ranging implications of the twenty five year ban on affirmative action and how racial discourse, policy, and on campus practices might change should Proposition 16 pass this November.

Discourse about affirmative action and its effects typically focus on admissions into the University of California (UC) system but, as our research summarized below demonstrates, the impacts drift far beyond the walls of California's most selective campuses and impact the state's community college system. The effects of Proposition 209 have been felt within the system's Student Equity Policy, an initiative originally aimed at addressing longstanding racial disparities, but impact minimized after 1996. Our research finds community college leaders and practitioners have become race-evasive — avoiding meaningful conversations and actions on race and racism — given the restrictions of Proposition 209, which perpetuates ineffective policies and practices that maintain systemic racism in higher education.

WHAT PROPOSITION 209 IS

Proposition 209 (i.e., California Civil Rights Initiative) is a California ballot initiative passed in November 1996 that reads: "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." Proposition 209 bans the practice of affirmative action which are anti-racist attempts to remedy historic racial injustices via policy and practice. Such remedies seek to explicitly improve representation of marginalized populations through hiring and contracting within public institutions. In higher education, Proposition 209 has primarily limited the consideration of race in admissions to public institutions as well as the ability to hire a racially diverse faculty and staff.

WHAT PROPOSITION 209 ISN'T

Under Proposition 209, governmental entities in California can still initiate a variety of affirmative action programs and initiatives to address the longstanding effects of past racial discrimination in public education. Proposition 209 does not prohibit institutional actors from discussing race in areas such as recruitment, student services, and programs designed to improve opportunities for minoritized students. In fact, the California Community Colleges system has an obligation per Title 3 regulations to address inequities for specific student groups. The statutes that govern Student Equity Plans (§§ 78220 – 78222) lists "American Indians or Alaskan natives, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Pacific Islander, White" as categories of students to "determin[e] student equity and disproportionate impact" in order to "ensure equal educational opportunities and to promote student success" (AB-943, 2019). Yet, Proposition 209's impact spanned further than legally intended and created harmful rhetoric that prevented California Community Colleges from engaging in race-conscious initiatives outside the area of admissions, retention, and transfer.

RACE-EVASIVE EDUCATIONAL POLICIES IN THE COMMUNITY COLLEGE CONTEXT

As stated earlier, this policy brief summarizes findings from a published study (Felix & Trinidad, 2020) that examined the implementation of the California Community Colleges' Student Equity Policy (SEP) and the adverse impact of Proposition 209. When created in 1992, the SEP centered on addressing the barriers faced by racially minoritized students, women, and people with disabilities. The policy narrative began with "no issue is more important to the future of California than increasing the enrollment and success of underrepresented ethnic minorities and individuals from other underrepresented groups" (Guichard, 1992, p. 5). It continued by citing the societal and institutional barriers faced by Black and Latinx communities and the inequitable higher education outcomes experienced by both. We found that over time the SEP was stripped of its intended race-conscious elements, diluting the original intent of the policy to address the barriers faced by racially minoritized students, women, and people with disabilities in community college. Below we share three sets of high-level findings from our work and illustrate the detrimental effects of restricting the consideration of race within community college:

TAKEAWAY #1: Proposition 209 Diluted Racial Focus of the Student Equity Policy

- The Student Equity Policy, passed in 1992, required community colleges to explicitly investigate and address the institutional barriers facing "ethnic minorities." The policy was clear in its intent to create a more equitable environment for racially minoritized students. After Proposition 209, the policy changed significantly due to the legal mandates as well as public rhetoric around affirmative action. The language shifted from being race-conscious to providing an "educationally equitable environment, regardless of ethnic origin or race" for all students (CA Education Code 1996, Title 5 §66030)
- As intended, Proposition 209 limited the use of race in policymaking, but also restricted institutional discourse and practice as well. Community colleges had to reevaluate, restructure, or remove race- and culturally- focused efforts meant to retain students, improve transfer pathways, and degree completion.
- System-level officials gradually discouraged SEP implementers within the California Community Colleges from focusing on race because of fear of litigation created by Proposition 209 discourse.

TAKEAWAY #2: Chilling Effect on Racial Discourse

- The rhetoric of Proposition 209 chilled efforts seeking to remedy inequities based on race in community college. For example, programmatic efforts supporting "African-American, Chicano/Latino, and American Indian students" were no longer seen as legal. Transfer Centers in community college quickly removed race-conscious goals, efforts, and practices, shifting their focus to "low-income, disabled, and first-generation students."
- The law silenced discussions on race, racism, and ways to address racialized inequities on campus. Instead, community colleges used more ambiguous umbrella terms like "diverse," "underrepresented," "marginalized," and "all students" to describe supporting racial/ethnic students.
- Proposition 209 also hampered community colleges in hiring faculty, staff, administration that recognize the particular needs of racially minoritized students or reflect the racial composition of community college students. It also restricted the use or consideration of race in developing job announcements, screening/selection committee, hiring processes, and post-hiring retention and promotion programs.

TAKEAWAY #3: Limiting Educator's Race-Conscious Practice

- Race-conscious and culturally relevant programs seeking to improve rates of transfer and completion in community colleges were ended as they could be seen as "not appropriate under the law." Proposition 209 reinforced a one-size-fits all approach where longstanding racialized disparities were to be addressed with generalized programs and practices.

- Over time, the rhetoric of Proposition 209 has become stronger than it actually mandates, limiting educators' response to observable racial inequities on campus. Fear of legal repercussions contributed to an unwillingness to use race-conscious strategies to close equity gaps. To counter, we often share the formal language of Proposition 209 and Article I Section 31 of the State Constitution with community college leaders to show that there are restrictions in admissions, but once enrolled there are no restrictions on considering race to improve student success.
- For those advocating for race-conscious efforts after Proposition 209, it was recommended to seek legal counsel regarding any new programs or practices explicitly serving racial groups. Given the potential conflict with the law, educators have been reluctant to create interventions like a Latinx Transfer Pathways program or Pacific Islander STEM support effort that target specific student groups for fear of being non-compliant.

ACTIONS TO TAKE

This brief summarizes ways the ban on affirmative action restricted the ability of community colleges to equitably support the 2.1 million students enrolled across the state. We believe the answer to achieving equity in higher education is to allow for honest conversations about race, racism, and longstanding racial disparities.

In the current political climate, we draw on Supreme Court Justice Sonia Sotomayor's remarks in *Schuette v Coalition to Defend Affirmative Action* calling for educational leaders to acknowledge race and racism when addressing long standing inequities.

Race also matters because of persistent racial inequality in society—inequality that cannot be ignored and that has produced stark socioeconomic disparities. . . In my colleagues' view, examining the racial impact of legislation only perpetuates racial discrimination. This refusal to accept the stark reality that race matters is regrettable. The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race. . . We ought not sit back and wish away, rather than confront, the racial inequality that exists in our society, acknowledging the simple truth that race does matter.

Race does matter. And we need to discuss and act on the racial realities of our society. Now is the moment, a window of change is before us to create a more equitable California. Proposition 16 provides a new opportunity to write, design, and implement policies that address structural racism and its detrimental impact on racially minoritized communities in the workforce and higher education. Whether driven by a moral, economic, or justice imperative, it is necessary to address the prior wrongdoings.

The need to dismantle structures that maintain racial and gendered hierarchies arrives at a time when the topic of systemic racism permeates mainstream media. With COVID-19, an increased call for racial justice due to police violence and the murder of George Floyd and countless other Black men and women, it has become almost impossible to deny the many ways in which racism is cultivated and maintained by the law. While structural racism has always existed, recent representations of struggle can and should serve as an avenue to extend beyond dialogue and move into action. To do so, we must interrogate hurtful rhetoric, policies and practices that maintain systemic racism by denying its existence. Now more than ever, we have a responsibility to overturn oppressive policies like California's twenty-five year ban on affirmative action that influence educational practices and hinder college access and success of racially minoritized students. We must acknowledge the negative impact of the law on communities of color across all of California higher education. But more importantly, we must act, and own our role in being part of the solution to advance racial justice.

5 Ways to Take Action to Pass Proposition 16:

- 1. Policymakers must recognize the need for race-conscious policies to address longstanding inequity by endorsing Proposition 16.** Without explicitly naming groups historically marginalized in education policies and programs, like Asian, Black, Indigenous, Latinx, and Pacific Islander students, there is no assurance that policies created will achieve their intent to directly benefit these students.
- 2. Institutional leaders can renew their commitment to race-conscious policies by endorsing Proposition 16** and continue to examine admissions processes, transfer rates and graduation rates, adherence to notions of meritocracy, and recognizing the role of race in educational success.
- 3. Community members can expand their awareness of structural racism** and how Proposition 16 will create opportunities for California communities.
- 4. Equity advocates can join [Yes on Proposition 16 Campaign](#).**
- 5. [Sign up](#) and volunteer to educate voters in your community.** Spread the word and talk to family members, friends, neighbors and urge them to vote Yes on Prop 16.