

Introduced by Senator Hernandez

December 3, 2012

Senate 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 31 of Article I thereof, relating to public postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

SCA 5, as introduced, Hernandez. Public postsecondary education: student recruitment and selection.

The California Constitution 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.

This measure would provide that the above prohibition does not prevent state institutions of higher education, as defined, from implementing student recruitment and selection programs permissible under the equal protection clause of the 14th Amendment to the United States Constitution.

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

- 1 *Resolved by the Senate, the Assembly concurring,* That the
- 2 Legislature of the State of California at its 2013–14 Regular
- 3 Session commencing on the third day of December 2012,
- 4 two-thirds of the membership of each house concurring, hereby
- 5 proposes to the people of the State of California, that the
- 6 Constitution of the State be amended as follows:
- 7 That Section 31 of Article I thereof is amended to read:

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

5 *(b) Notwithstanding subdivision (a), this section does not prevent*
 6 *state institutions of higher education from implementing student*
 7 *recruitment and selection programs that are permissible under*
 8 *the equal protection clause of the Fourteenth Amendment to the*
 9 *United States Constitution.*

10 ~~(b)~~

11 (c) This section shall apply only to action taken after the
 12 section's effective date.

13 ~~(e) Nothing in this~~

14 (d) This section shall *not* be interpreted as prohibiting bona fide
 15 qualifications based on sex which are reasonably necessary to the
 16 normal operation of public employment, public education, or public
 17 contracting.

18 ~~(d) Nothing in this~~

19 (e) This section shall *not* be interpreted as invalidating any
 20 court order or consent decree ~~which~~ *that* is in force as of the
 21 effective date of this section.

22 ~~(e) Nothing in this~~

23 (f) This section shall *not* be interpreted as prohibiting action
 24 which must be taken to establish or maintain eligibility for any
 25 federal program, ~~where~~ *if* ineligibility would result in a loss of
 26 federal funds to the State.

27 ~~(f)~~

28 (g) (1) For the purposes of this section, "State" shall include,
 29 but not necessarily be limited to, the State itself, any city, county,
 30 city and county, public university system, including the University
 31 of California, community college district, school district, special
 32 district, or any other political subdivision or governmental
 33 instrumentality of or within the State.

34 (2) *For the purposes of this section, "state institutions of higher*
 35 *education" shall mean: (A) the California Community Colleges;*
 36 *(B) the California State University, and each campus, branch, and*
 37 *function thereof; and (C) each campus, branch, and function of*
 38 *the University of California.*

39 ~~(g)~~

1 *(h)* The remedies available for violations of this section shall
2 be the same, regardless of the injured party's race, sex, color,
3 ethnicity, or national origin, as are otherwise available for
4 violations of then-existing California antidiscrimination law.

5 ~~*(h)*~~

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

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