
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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