



Californians for Equal Rights Foundation
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CALIFORNIANS FOR EQUAL RIGHTS FOUNDATION

June 17, 2021

SUBJECT: CFER POSITION LETTER AGAINST AB105

Honorable Members of the Senate Committee on Labor, Public Employment and Retirement:

On behalf of Californians for Equal Rights Foundation, I am writing to express our strong opposition to AB105. AB105 (The Upward Mobility Act of 2021), if passed, would violate California's constitutional principle of equal treatment for all and also contravene the U.S. Constitution and federal legislation.

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reaffirmed on the November 2020 ballot when 57.2% of California voters rejected Proposition 16, which would have repealed Prop 209. Under the veneer of addressing "barriers to upward mobility and inclusion for people of color working in California's civil services system", AB105 proposes setting up annual goals and timetables for civil service positions which will "include race and gender as factors". This is tantamount to instituting government handouts and racial preferences, thereby violating the state constitution, stoking racial divisions, and legalizing racial discrimination in public employment.

AB105's implementation would undoubtedly lead to *de facto* quotas and preferences, which violates a series of federal legislation and the U.S. Constitution. This includes: The Fourteenth Amendment to the U.S. Constitution (equal protection of the laws), Titles VI and VII of the Civil Rights Act of 1964, and Supreme Court rulings in *City of Richmond v. Croson* (1989), *Adarand Constructors, Inc. v. Peña* (1995), and *Ricci v. DeStefano* (2009). On the state level, AB105 would also contravene California Supreme Court rulings in *Hi-Voltage v. City of San Jose & Coral Construction Co. v. City and County of San Francisco*. Generally speaking, AB105 would fail to satisfy the principles of strict scrutiny and narrow tailoring in the rare cases where race- or sex-conscious considerations are permitted.

Under California's guarantee of equality before the law, workforce diversity for people of color in public employment has increased significantly and reflected changes in the working age population: the percentage of minority civil servants rose from 38% (70,000) in 1990 to over 58%



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(132,413) in 2020. Women make up about 46.5% of the civil workforce. In addition, the upward trend is not skewed by the unverified allegation of minorities' occupying low-paying positions. In the Department of Motorvehicles, for instance, managerial positions are 29.4% black, 27.5% Latino, 2% Asian, and 33.3% white. Therefore, AB105 is based on a misguided rationale that "Black employees are passed up for promotions over White employees", as stated by its principle author Assemblymember Chris Holden.

Californians for Equal Rights Foundation (CFER) is a non-political and non-profit organizations founded in the wake of California's resounding affirmation of its constitutional guarantee of equal treatment. CFER is dedicated to promoting & raising public awareness on our nation's fundamental principles of equality and merit. CFER welcomes genuine and meaningful public policies that improve diversity and competitiveness of our 21st century civil workforce in a constitutional and legal manner. Advocating blatant numeric goals with race/sex-based considerations distorts the principle of equal opportunity into an illiberal, social-engineering tool of equal outcome. Instead of focusing on tribal divisions and political favoritism, we should educate our students and workers effectively with reasonable accommodation of disadvantaged individuals. We should also make sure that every individual has equal access to public resources, and that our government provide institutional support that encourages American virtues of hard-work, initiative, self-discipline and individual merit. Therefore, we urge all Labor, Public Employment and Retirement Committee Members to VOTE NO ON AB105 and urge the rest of the California Legislature to reject unconstitutional racial quotas that would be legalized by AB105!

Sincerely,

Wenyuan Wu,
Executive Director, Californians for Equal Rights