



CFER Special Report: State-Sanctioned Racial Grievance Amidst Rising Challenges

15 New California Bills and Resolutions to Watch January 2021

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Executive Summary

On January 11, 2021, the California Legislature reconvened its regular session in both the Assembly and Senate. For the 2021 calendar year, 267 bills, resolutions and constitutional amendments have been introduced. Among these proposed legislative measures, 15 are related to topics regarding equal access, race, gender, diversity or equity, thereby having potential impact on CFER's activities promoting equal rights. *What are the purported goals of these measures? How would they impact California's communities, economy, and education, if passed? To which extent do these bills, resolutions and amendments collectively reflect lawmakers' political will to advance the public interest, vis-à-vis an ideological agenda at the expense of social cohesion?* This report intends to answer all these important questions through a balanced and structured analysis of the 15 most relevant bills.

In short, while some of these proposed bills are aimed at increasing equal opportunity and access in workplace, education and marketplace, many new bills are deeply problematic for legalizing racial preferences and/or encouraging racial discrimination in civil service ([AB 105](#)), community engagement ([AB 118](#)), public health ([SB 40](#)) and education ([AB 101](#)). The latter group of bills contravene California's constitutional principle of equal treatment for all through racial preferences and divisions. Others such as [HR 4](#), [SB 12](#) and [SB 17](#), along with the aforementioned



bills of potential constitutional violation, add to the state legislature’s exhaustive list of racial grievance, with an ideological and misguided obsession with overloaded concepts such as “racism”, “equity”, and identity politics. The collective ramifications of racial grievance lie in the inflammatory rhetoric of racial divisions, blatant violations of civil rights, as well as a detrimental distraction from the legislature’s anticipated obligation to legislate meaningful solutions to counter the state’s socioeconomic and public health challenges.

Established by the passage of Proposition 209 in 1996 and affirmed by the defeat of Proposition 16 in 2020, this principle specifies a constitutional ban on preferential treatment or discrimination on the basis of “race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting”. This principle reflects the letter and spirit of the landmark U.S. Civil Rights Act of 1964 and the 14th Amendment to the U.S. Constitution. It’s a foundational social contract that serves to unite Californians of vastly diverse backgrounds and advance basic civil rights of equality and individual liberty. For California lawmakers to consider proposals that directly violate this principle, the State Legislature is sowing hatred and divisions, at a time when the Golden State is particularly vulnerable.

Following last November, California has experienced [a devastating surge of COVID-19 infections](#): over 2.8 million positive cases, 31,105 deaths and plummeting hospital capacity. The state economy, the world’s fifth largest, is fraying with [a 3.7% contraction in real GDP](#) in 2020, [high unemployment](#) (16.4% in April 2020) and [a capital flight](#) with California businesses exiting the state by the thousands. With distance learning as the new norm of school instruction and political obstacles to school re-opening, California students are [suffering grave consequences](#) in academic performance, mental and physical health. To tackle these challenges requires a concerted effort between the public and private sectors to coordinate health crisis responses, spur sustainable



growth, incentivize innovation and improve our public education, none of which can be advanced through racial grievance.

We hope that this timely report will shed light on California’s policy debate and provide value to different stakeholders including the general public, policy analysts and civic organizations.

Racial Preferences in Civil Service, Community Assistance & Medical Education

In the 2021 legislative session, **AB 105**, **AB 118** and **SB 40** are especially concerning. Each bill would potentially violate the California Constitution (Article I, Section 31 (a)) which states that “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.”

AB-105 or the Upward Mobility Act of 2021 was introduced by Assemblymember Chris Holden (D41) to address “barriers to upward mobility and inclusion for people of color working in California’s civil services system.” Specifically, the bill would set up annual goals for upward mobility and timetables for civil service positions which will “include race and gender as factors”. Although the bill was carefully worded not to include terms such as “racial quotas” or “preferential treatment”, its implementation will unequivocally lead to *de facto* quotas and preferences. AB 105 would authorize the Department of Human Resources to oversee the upward mobility program in low-paying occupational groups and develop numerical goals that “include race and gender as factors”. **The bill is currently waiting for its first hearing in the Assembly Committee on Public Employment and Retirement.**

Furthermore, the bill seeks to amend Section 18935 of the Government Code so that the designating appointing power for the upward mobility program is comprised of an ethnically diverse team of men and women. For Assemblyman Holden, AB 105 represents [a key step](#) toward



his vision of racial justice under the rationale that “Black employees are passed up for promotions over White employees”. Assemblyman Holden was also the lead author on [AB 979](#), which was signed into law in September 2020 to establish racial quotas for corporate boards in California.

[AB-118](#) or the Community Response Initiative to Strengthen Emergency Systems Act (C.R.I.S.E.S. Act) was introduced by Assemblymember Sydney Kamlager (D54) to establish a 3-year grant pilot program for enhanced emergency response targeting “specified vulnerable populations”. Each grantee (a community organization) would receive a minimum award of \$250,000 a year to address

emergency issues in “mental health, intimate partner violence, community violence, substance abuse, and natural disasters”. In turn, the state would articulate a policy framework to support community organizations’ involvement in addressing these issues and building capacity. **This proposal is currently in the Assembly Committee on Emergency Management, waiting for the first public hearing.**

While proposed under a generally virtuous context of improving community-level outcomes in crisis situations, AB 118 contains two problematic details. First, it puts communities “where there is a history and pattern of racial profiling” as the first priority target for the grant program and “people of color” at the top of its list of “vulnerable populations”. Second, the Act would require the establishment of the 11-member “C.R.I.S.E.S. Committee”, with consideration of “racial, gender and ethnic diversity and representation of communities”. In other words, the state, in allocating grant resources for the state’s community organizations and implementing state-level governance of the program, would give precedence or preferences along racial, ethnic or gender lines, rather than accommodating needy individuals, families and communities on a case-by-case scenario.



[SB-40](#) aims at creating a 5-year program called “California Medicine Scholars Program” commencing on January 1, 2023 to “expand healthcare workforce in rural and underserved communities”, and to increase “the number and representation of minority primary care physicians in the state”. The program would also require four Regional Hubs of Health Care Opportunity (RHHO) plans, each to “recruit and select 50 California Medical Scholars each calendar year from 2023 to 2026”, with a focus on underrepresented minorities. Introduced by State Senator Melissa Hurtado (D14), **the bill is pending referral from the Senate Rules Committee.**

In particular, SB 40 seeks to create a comprehensive statewide approach and a school-to-practice pipeline to address shortage of primary care physicians in vulnerable and underserved communities in both rural and inner-city settings, with a focus on increasing diverse, “Latino, African American, Native American and Pacific Islander physicians”. In other words, it seeks to

grant preferential treatment to the groups identified above in medical education. The rationale behind giving priority to these diverse physicians is that “African American and Latino doctors are more likely to practice in communities that reflect their cultural background” and that “the gaps in mortality between African American and white patients can be reduced when African American patients are treated by African American physicians”. As a result, the 5-year program must set one of its goals in “An overall increase in the percentages of African American, Latino, and Native American student populations enrolled full time in participating California community colleges”. This kind of blatant race-based reasoning is void of scientific evidence and mischaracterizes the achievement gap in medical education as an outcome-specific problem. The bill proposes solving the discrepancies in healthcare workforce by adjusting recruitment and admission outcomes rather than meaningfully improving the quality of education in underserved communities.



Racism as a Catch-all Strawman

While not instituting unconstitutional racial quotas or discrimination, **HR 4** and **SB 17** greatly compliment the legislature's perennial obsession with race by falsely targeting racism as the culprit of parenting barriers and public health outcomes.

SB-17 was introduced by State Senator Richard Pan (D6) and provides a conceptual framework of racism as "a public health crisis". By addressing racism as a public health crisis, the bill would require that the State Department of Public Health, and other relevant agencies recognize the long-standing impacts of systemic racism and approach laws and regulations with "an antiracist, Health in All policy equity-driven focus". The basis of the bill's main argument rests upon an observation that racist assumptions and practices have led to racist government policies and public institutions, resulting in unhealthy physical, social and environmental conditions for "Black, Indigenous, and people of color (BIPOC)". **SB 17 is pending assignment in the Senate Rules Committee.**

Two structural problems must be identified with the ontological assumptions and grave consequences of SB 17. First, the proposal hinges upon an exhaustive, yet unscientific definition of racism "embedded as a founding principle in the United States Constitution". Such an amorphous and convoluted conceptualization of racism as an overarching, path-dependent and defining feature of America and American institutions. America's past of slavery, Jim Crow and housing segregation commands over the current policy-making process, even though the nation in general has improved by leaps and bounds in terms of guaranteeing equal access and opportunity for formerly marginalized populations. Second and more importantly, attributing discrepancies in health indicators to fatalist racism masquerades true policy failures and in turn would create disastrous policy outcomes. Take vaccine distribution in the current COVID-19 pandemic as an example. In spite of rising cases and a sufficient pool of vaccines, the state has lagged behind the



national average in vaccine distribution: 2.07 doses per 100 people in California vs. 3.03 does per 100 people nationwide. Administrative delays, bureaucratic bottlenecks, and partisan politics, rather than racism are responsible for this policy setback. By obsessing with racism, SB 17 would distract state public institutions from solving practical policy matters to engage in counter-productive, ideological shaming and blaming.

[HR-4](#) was introduced by Assemblymember Mark Stone (D29) as a house resolution to declare January 2021 as “Positive Parenting Awareness Month”. Furthermore, the resolution provides a government “tool kit” of proven strategies to support families and parents who are living in adverse environments that lack equity, “as measured by racism, concentrated poverty, poor housing conditions and other barriers to opportunity”. It’s also intended to encourage positive parenting through “a population health approach so that all families have equitable opportunities to access information in ways that respect their unique beliefs, traditions, customs, interests, and racial, ethnic, tribal, and cultural practices”. **HR 4 was approved unanimously by the Assembly Rules Committee on January 11, 2021.**

While drafted to promote constructive parenting practices that recognize cultural diversity and public-private partnerships, HR 4 must be analyzed in relation to SB 17’s basic assumption of racism as the root of all social ills. In particular, HR 4 baselessly argues that lack of equity in parenting resources is first and foremost measured by racism. Subject to multiple interpretations

and historical/spatial contexts, racism is not empirically measurable. Making policing based upon unmeasurable claims leads to lack of transparency, corruption and erosions in public trust.



State as “Lender of Last Resort” in Instituting Ethnic Studies

[AB-101](#) is a come-back of the previously failed [AB 331](#) and would require that every high school student in California’s public education system take a course on ethnic studies in order to graduate. The bill would mandate students graduating in the 2029–30 school year, including those enrolled in a charter school to take a one-semester course in ethnic studies. Commencing with the 2025–26 school year, all California public high schools would be demanded to offer at least a one-semester course in ethnic studies. Introduced by Assembly Member Jose Medina (D61), the proposal also specifies that the financial burden of curricular development and changes falls on the state. **AB 101 is currently pending hearing in the Assembly Education Committee.**

AB101 was introduced in the State Legislature, at the same time when the State Board of Education is preparing to launch its Ethnic Studies Model Curriculum for high schools. AB331, AB101’s precedent, was vetoed by Governor Newsom in last September due to disagreements over the model ethnic studies curriculum. Governor Newsom argued that controversies over the model curriculum must be addressed and resolved before the state can impose a high school mandate. However, these disagreements have not been resolved after the Board of Education released its [third and final draft](#) of the model curriculum, as parents, educators and community organizations send in over 2,000 public comments criticizing the module. It’s precipitous of state lawmakers to legislate a government mandate on ethnic studies as a high school graduation requirement when important stakeholders have expressed skepticism regarding the model curriculum’s divisive and discriminatory nature. For example, the latest model curriculum still divides students into victims and oppressors based on the color of their skin, undermines traditional American values of equal opportunity, merit, and individualism, and promotes violent, revolutionary role models over inspirational leaders who improved our society via peaceful means.



Other Bills of Interest: Good Intentions that Need Continued Monitoring

Notably, several bills propose meaningful solutions to combat discrimination in workplace (AB13, AB60, SB16), increase opportunity and engagement for the underprivileged (AB46, AB106, SB37, SB61), increase educational access for challenged students (AB46 and AB102) and identify vulnerable communities for environmental governance (SB 12). CFER welcomes lawmakers' good intentions behind pushing these bills but will continue to monitor their progress and implementation to ensure that advancing equal access for our state's vulnerable population groups does not come at the expense of violating the CA Constitution Article I Section 31 (a).

[AB-13](#) or the Automated Decision Systems Accountability Act of 2021 regards personal rights in automated decision systems. Introduced by Assemblymember Ed Chau (D49), it would require an Automated Decision Systems Advisory Task Force to be established to ensure that there are processes in place to continually test for biases during the development and to detect and prevent discrimination in state hiring and other workplace decisions. It would demand that the State Legislature declare its intention to protect the rights of all persons in situations involving automated decision-making and evaluate whether the system in place has a disproportionate adverse impact on a protected class when the state or a business collects personal information. Since the bill doesn't specify what constitutes a protected class or a bias, we will continue to monitor its progress and implementation. **The bill is currently waiting for its first hearing at the Assembly Committee on Privacy and Consumer Protection.**

[AB-46](#) or California Youth Empowerment Act was introduced by Assemblymember Luz Rivas (D39) for the purpose of establishing a state-wide commission to promote civic engagement of disconnected and disadvantaged youth. Based on the proposal, this commission would consist of members that “represent the geographical, racial, ethnic, socioeconomic, cultural, physical, and educational diversity of California’s youth”. There is no empirical evidence on how a 25-member



commission can reflect such an extensive list of indicators of diversity. Therefore, further monitoring and analysis are needed to ensure that the selection process does not lead to discrimination or preferences based on race, sex, color, ethnicity or national origin. **The bill is currently in committee process at the Assembly Committee on Accountability and Administrative Review.**

[AB-60](#) addresses peace officer standards by specifying various eligibility and accountability parameters for law enforcement. It was introduced by Assemblyman Rudy Salas (D32) in response to tensions between law enforcement and the public. Notably, the proposal characterizes “bias on the basis of race, national origin, religion, gender identity or expression” as a form of “serious misconduct”. The Peace Officer Standards Accountability Advisory Board would be created to review complaints and reports of misconduct and consider specified best practices. **The bill is currently in the Assembly Committee on Public Safety.**

[AB-102](#) concerns College and Career Access Pathways partnership, or a partnership between community colleges and local school districts to improve high school graduation and college preparedness. The partnership would be aimed at expanding enrollment opportunities for underrepresented students through measures such as remedial courses taught by community college faculty for students who do not meet grade level standard. It was introduced by Assemblyman Chris Holden (D41) and deserves further investigation as for whether accommodation of underperforming students doesn’t compromise academic standards and whether accommodation will be given to disadvantaged students on an individual basis, regardless of race, sex, color, ethnicity or national origin. **The bill is currently in committee process at the Assembly Committee on Higher Education.**



[AB-106](#) reintroduces the Regions Rise Grant Program to “close the equity gap and spur economic growth”. The grant program would operate under the Economic Revitalization Act which establishes the Governor’s Office of Business and Economic Development, also known as “GO-Biz,” in state government. The bill was introduced by Assemblyman Rudy Salas (D32) to help regions in California create equitable economic recovery strategies in the wake of COVID-19. Much remains to be clarified regarding the practical meaning of equitable distribution of recovery-focused grants. **The Bill is pending referral in the Assembly Rules Committee.**

[SB-12](#) regards wildfires planning and zoning and proposes a comprehensive long-term plan for local governments to protect the community from various fire hazards to include land use, housing, taxation, research, and other elements. Notably, the bill includes an environmental justice element to identify disadvantaged communities as “low-income area that is disproportionately affected by environmental pollution and other hazards”. Since socioeconomic status is a better proxy of disadvantage than race, we welcome Senator Mike McGuire’s (D2) introduction of such legislation that recognizes “low-income” as an indicator of disadvantage. **SB 12 is pending assignment in the Senate Rules Committee.**

[SB-16](#) is related to release of records for peace officers. From July 1, 2022, according to the proposal, law enforcement agency or oversight agency must sustain finding related to any record that “a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.” SB 16 mirrors AB 60 in terms of building an accountability mechanism for the state’s law enforcement



and was introduced by Senator Nancy Skinner (D9). **It is pending assignment in the Senate Rules Committee.**

SB-37 or the Cortese List Act of 2021 addresses environmental remedies of contaminated sites and intends to provide a regulatory framework of prior, informed consultation between the state and California Native American tribes regarding proposed development projects. The principle of prior and informed consultation is integral to the principle of equal treatment and improves civic engagement of previously marginalized groups to preserve potential tribal environmental and cultural resources. Introduced by Senator Dave Cortese, **the bill is pending assignment in the Senate Rules Committee.**

SB-61 would require the California Workforce Development Board to establish and administer the Lifting Families Out of Poverty Supportive Services Program. This would be a \$50 million grant program to award funds to a consortium to address equity gaps and provide services for low-income workforce participants. While providing supportive services for low-income workers represents a good-faith step toward race-neutral alternatives to help those in need, SB 61 needs to be further examined regarding the concrete steps of addressing equity gaps. **Currently, the bill is pending assignment in the Senate Rules Committee.**

In summary, our special report offers a comprehensive and up-to-date overview of 15 new bills and resolutions that were recently introduced into the State Legislature. This report pays particular attention to six (AB105, AB118, SB40, SB17, HR4, and AB101) bills among all 15. AB105, AB118 and SB40 would potentially violate California's ban on racial preferences in public employment, public education and public contracting by proposing reinstating race-conscious considerations in civil workforce promotion, community organization assistance, and medical education, respectively. SB17 and HR4 construct an ideological framework of racism as the basis



to explain health outcome discrepancies and parental resource scarcity. At the height of a global pandemic that impacts every individual, family and business in California, it is paramount that state lawmakers represent the voices and interests of their constituents in a fair, transparent and inclusive manner. This is not the time to perpetuate division, toxic identity politics or political favoritism. As such, Californians for Equal Rights strongly opposes these six aforementioned proposals and will continue to monitor the progress of all 15 bills discussed in this report. Comments regarding the new bills or this report can be sent to info@cferfoundation.org.