



CALIFORNIANS FOR EQUAL RIGHTS FOUNDATION

January 22, 2021

SUBJECT: CALIFORNIANS FOR EQUAL RIGHTS POSITION LETTER AGAINST SB 40

Honorable Senate Members:

On behalf of Californians for Equal Rights, I am writing to express our concern regarding SB40 and its race-based approach to address a shortage of primary care physicians in vulnerable and underserved communities. SB40, 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reaffirmed on the November 2020 ballot when 57.2% of California voters rejected Proposition 16, which would have repealed Prop 209. In a benign context of creating the "five-year, California Medicine Scholars Program" to "expand healthcare workforce in rural and underserved communities", SB40 proposes an overarching goal of "(a)n overall increase in the percentages of African American, Latino, and Native American student populations enrolled full time in participating California community colleges". In spite of no scientific or empirical evidence showing that a patient would receive better care if the healthcare practitioner comes from the same racial or ethnic background. SB40 insists on its race-preference goal.

Basing on a flawed rationale that "the gaps in mortality between African American and white patients can be reduced when African American patients are treated by African American physicians", the "California Medicine Scholars Program" under SB40 would directly translate into government handouts and racial preferences, thereby violating the state constitution, stoking racial divisions, and legalizing racial discrimination in public employment. Without any scientific evidence correlating healthcare outcomes with ethnic or racial affiliation, SB40 is in fact promoting re-segregation based on pseudoscience and conjectures.

SB40's implementation would undoubtedly lead to *de facto* and unjustified racial 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, SB40 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, SB40 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 public healthcare provisions and support has increased significantly and reflected changes in the working age population. By the end of 2020, healthcare practitioners among California's public employment pool consisted of 15.6% African Americans, 20.3% Latinos, and 33.3% Asians. Healthcare support personnel were made up of 17% African American, 34.1% Latinos and 27.6% Asians. As of Fall 2019, the prestigious UCSF School of Medicine had a student body of 33% underrepresented, 53% female, and 16% first-generation-to-college. Workforce and student body diversity in medicine can be accomplished without counterproductive and discriminatory race preferences. More importantly, postsecondary and graduate medical education must first and foremost consider the candidate's academic merit regardless of race.

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 state's medical education as part of public higher education 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 California Senate Members and those in the bill's destination committees to VOTE NO ON SB40 and reject unconstitutional racial preferences that would be legalized by SB40!

Sincerely,

Wenyuan Wu, Ph.D.
Executive Director, Californians for Equal Rights Foundation