

AMENDED IN SENATE MAY 30, 2013

**Senate Constitutional Amendment**

**No. 5**

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**Introduced by Senator Hernandez**

*(Principal coauthor: Assembly Member Bradford)*

*(Coauthors: Senators Block, De León, Lara, Leno, and Steinberg)*

*(Coauthor: Assembly Member Garcia)*

December 3, 2012

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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 amended, 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~~ *eliminate this prohibition on state discrimination or preference in the operation of public education.*

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:*

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

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

14     (c) ~~Nothing in this~~ This section shall *not* be interpreted as  
15 prohibiting bona fide qualifications based on sex ~~which that~~ are  
16 reasonably necessary to the normal operation of public  
17 employment, ~~public education,~~ or public contracting.

18     (d) ~~Nothing in this~~ This section shall *not* be interpreted as  
19 invalidating any court order or consent decree ~~which that~~ is in  
20 force as of the effective date of this section.

21     (e) ~~Nothing in this~~ This section shall *not* be interpreted as  
22 prohibiting action ~~which that~~ must be taken to establish or maintain  
23 eligibility for any federal program, where ineligibility would result  
24 in a loss of federal funds to the State.

25     (f) For the purposes of this section, "State" shall include, but  
26 not necessarily be limited to, the State itself, any city, county, city  
27 and county, ~~public university system, including the University of~~  
28 ~~California, community college district, school district, special~~  
29 ~~district, or any other political subdivision or governmental~~  
30 ~~instrumentality of or within the State. "State" does not include~~  
31 ~~the University of California or the Public School System.~~

32     (g) The remedies available for violations of this section shall  
33 be the same, regardless of the injured party's race, sex, color,  
34 ethnicity, or national origin, as are otherwise available for  
35 violations of then-existing California antidiscrimination law.

36     (h) This section shall be self-executing. If any part or parts of  
37 this section are found to be in conflict with federal law or the  
38 United States Constitution, the section shall be implemented to  
39 the maximum extent that federal law and the United States

1 Constitution permit. Any provision held invalid shall be severable  
2 from the remaining portions of this section.

3 That Section 31 of Article I thereof is amended to read:

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

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

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

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

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

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

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

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

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

1     ~~(i) This section shall be self-executing. If any part or parts of~~  
2 ~~this section are found to be in conflict with federal law or the~~  
3 ~~United States Constitution, the section shall be implemented to~~  
4 ~~the maximum extent that federal law and the United States~~  
5 ~~Constitution permit. Any provision held invalid shall be severable~~  
6 ~~from the remaining portions of this section.~~

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