

Making Discrimination OK Again

The losers in a 2020 California referendum are back again with a sneakier version.



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Do they ever give up? Those looking to divvy up Americans by race, that is. In California they tried to get race preferences approved in a 2020 referendum, but voters rejected it 57.2% to 42.8%. This was a stunning rebuke, not only because the rejection came from residents of a blue state but because the losing side had outspent opponents something like 14 to 1.

In 2023 the Supreme Court weighed in with a landmark ruling that barred colleges from treating people as members of a racial group instead of as individuals—and cast constitutional doubt on all race-based preferences. “Eliminating racial discrimination means eliminating all of it,” Chief Justice John Roberts wrote. Couldn’t be clearer, right?

Not in California. Undaunted state Assemblyman Corey Jackson is pushing a bill called ACA7. It takes aim at the state ban on race preferences that voters put in the constitution in 1996 when they passed Proposition 209. Californians reaffirmed Proposition 209 three years ago at the ballot box.

The language the voters agreed to and the activists hate reads as follows: “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.”

Unlike the 2020 effort, the new bill would leave that language intact. Instead, it would add a provision allowing the governor to create “exceptions.” Effectively that would gut the ban.

Apparently, the lesson the advocates of state-sponsored discrimination have taken from their defeat is that if at first you don’t succeed, try something sneakier.

Here is Mr. Jackson’s press release summarizing the bill: “ACA7 will allow . . . the Governor to issue waivers to public agencies that wish to use state funds for research-based, or research-informed and culturally specific interventions to increase life expectancy, improve educational outcomes, and lift people out of poverty for specific ethnic groups and marginalized genders.”

Gail Heriot is a University of San Diego law professor who sits on the U.S. Commission on Civil Rights and was a leader of both Proposition 209 and the “no” effort on the 2020 referendum. She has launched a petition with Extremely Concerned Californians at change.org opposing the measure.

“ACA7’s proponents are hoping that voters will be fooled into thinking that it is just a small exception,” Ms. Heriot says. “In fact, it gives the governor enormous power to nullify Proposition 209.”

Edward Blum agrees. As the founder of Students for Fair Admissions, he spearheaded the lawsuits against Harvard and the University of North Carolina that killed race preferences in college admissions.

“Racial preferences are never legally justified because some specious ‘research’ report concludes it would be beneficial to a certain race,” says Mr. Blum. “This exemption will trigger endless litigation that will polarize California citizens by race.”

But sowing discord is a feature, not a bug. As the bill was making its way through the Assembly, Mr. Jackson got in a spat with Bill Essayli—a Republican who is also the first Muslim elected to the Assembly. Mr. Essayli pointed out that the majority of Californian voters disagree with state-sanctioned discrimination. “I fundamentally disagree with this backwards policy,” he later tweeted.

Mr. Jackson responded in his own tweet: “This is a perfect example how a minority can become a white supremacist by doing everything possible to win white supremacist and fascist affection.”

ACA7 passed the state Assembly in September. If it passes the Senate, it will be on the ballot in November. If Californians vote yea, it will become part of the constitution.

But all is not lost. The 2020 referendum awakened a sleeping giant: the Asian-American community. Asian-Americans quickly realized (as the Harvard case drove home) that they and their children are the primary victims whenever race is substituted for merit. Asian-Americans are more aware and organized than they were in 2020. They aren’t likely to be fooled by talk of “exceptions” based on “research.”

It also isn’t a given that ACA7 will make it through the state Senate. Though Democrats enjoy a 32-8 majority, polls consistently show race preferences are unpopular. Gov. Gavin Newsom’s support will be crucial.

Though he has no formal role in the constitutional process, some think the bill will go nowhere if Mr. Newsom doesn’t want it to. If it does make it to the ballot this November, he’ll be under immense pressure to endorse it. That’s another reason the Senate should kill ACA7 now, Ms. Heriot says.

“California voters need to make sure their state senators know where they stand—through emails, phone calls, letters, and petitions,” Ms. Heriot says. “Once the senators understand that, they will realize putting ACA7 on the ballot is not in their interest.”