

The Gender Impact of the Proposed Michigan Civil Rights Initiative

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The Michigan Civil Rights Initiative (MCRI) is a proposed amendment to the state constitution, certified to be on the ballot in November 2006, that would prohibit all state and local government entities, including public schools, from using affirmative action programs that give preferential treatment based on race, sex, color, ethnicity or national origin, and from discriminating on those bases, in public employment, public education or government contracting¹. Although described as a civil rights initiative, the MCRI appears to confer no additional civil rights on the basis of race, gender, ethnicity or national origin. With proper enforcement, moreover, existing state and federal laws seem to be clear and adequate. Title VI of the federal Civil Rights Act of 1964 protects against discrimination on the basis of race, color or national origin in any program receiving federal funding²; Title VII of that Act prohibits employment discrimination based on race, color, religion, sex and national origin³; and Title IX of the Education Amendments of 1972 prohibits sex discrimination in any educational program receiving federal funding⁴. Executive Order 11246 also forbids discrimination by federal contractors and subcontractors and requires them to take affirmative action for certain classes of workers⁵. Some municipalities protect additional groups against discrimination.

The Elliott-Larsen Civil Rights Act, passed in Michigan in 1976, protects against discrimination in employment, education, public services and public accommodations on the basis of race, sex, color, national origin, age, height, weight, religion, familial status or marital status⁶. The Equal Protection Clause of the Michigan State Constitution duplicates the federal equal protection clause, and guarantees the equal protection of the laws⁷.

In California, Proposition 209⁸, a nearly identical constitutional amendment adopted in 1996, has been used to erode previously legal, court-sanctioned efforts by state and local governments to reach out to women and minorities in order to reverse historic discrimination and exclusion by providing fair and equal access to opportunity. Programs providing access and exposure to education, employment and business opportunity for women and minorities have been eliminated or amended. Affected programs include:

- Elementary and high school level reading, science and math programs for female and minority students⁹.
- Summer and after-school programs targeted to either girls or boys, or to children in particular racial, national or ethnic groups¹⁰.
- Outreach and funding for women and minority math, science and technology teachers¹¹.
- Programs helping women and minorities become apprentices in the skilled trades¹².
- Higher education funding for minority health professionals¹³.
- Scholarships, fellowships and grants at all levels of education that take into consideration gender, race, ethnicity or national origin.¹⁴
- Affirmative action in public contracting, including not only those efforts with explicit goals but also outreach programs and notification of bidding opportunities for women- and minority-owned businesses¹⁵.

In general, references to race and gender in affected programs have either simply been eliminated or have been replaced by socioeconomic status, which is a highly problematic proxy for race and an ineffective proxy for gender.

Adoption of a constitutional amendment is only the first step in determining the policy implications of that change; often, the courts are called on to interpret the language so that policy decisions can be made. In California, Governor Pete Wilson filed a lawsuit against the State Personnel Board in order to establish the scope of Proposition 209. Ward Connerly, the sponsor of Prop. 209 (and, later, of the Michigan Civil Rights Initiative) joined him in this suit and continued to pursue the case after Gray Davis defeated Pete Wilson for the governorship.

The 2001 decision in this suit, which came to be known as *Connerly v. State Personnel Board*, states, "Proposition 209 . . . prohibits discrimination against or preferential treatment to individuals or groups *regardless of whether the governmental action could be justified under strict scrutiny.*" A strict scrutiny standard requires that a suspect statutory classification (for example, a

classification based on race¹⁶) serve a compelling government purpose and be narrowly tailored to achieve that purpose. The court in *Connerly* confirmed that, under California law (unlike federal law), gender-conscious governmental action is subject to a strict scrutiny standard.

According to the court, limitations imposed by Proposition 209 would prevail where federal law merely permits, rather than expressly requires, the use of race- or gender-based preferences. Thus, *Connerly v. State Personnel Board* declares that Proposition 209 would invalidate those California statutes that employ gender- or race-based classifications for the purpose of targeting programs or services, even if they are permitted under federal law or otherwise meet a strict scrutiny standard, except when either (a) federal law requires the state to engage in the particular action or (b) the state would be threatened with ineligibility for a federal funding program and a corresponding loss of federal funds if it did not engage in that action. Following the *Connerly* decision, the State of California ended affirmative action programs in civil service and community college hiring and in government contracting.

Thereafter, the National Coalition of Free Men, Los Angeles (CFM) or its members filed suit to challenge, among others¹⁷, breast cancer screening and battered women's shelters programs. In *Blumhorst v. Jewish Family Services of Los Angeles*, an individual CFM member directly sued battered women's shelters for violating equal protection by allegedly providing services to women, but not men, and sought the elimination of state and county funding as a remedy¹⁸. California law specifically dedicates funding for domestic violence services only to battered women and their children¹⁹. Funding for battered women's shelters was preserved when the courts found that Blumhorst lacked standing because, although he claimed to be a survivor of domestic violence, he was not in need of services when he called shelters seeking to be admitted, and therefore had not suffered any injury when he was allegedly denied services²⁰. In that case, Blumhorst had also argued that section 11139 of the California Government Code²¹, which exempts lawful programs serving the disabled, the aged,

minorities and women from challenges under state anti-discrimination law, was unconstitutional. Because the appellate court found that Blumhorst lacked standing, it did not review his claim that the statute was unconstitutional²². Findings in the *Connerly* and *Blumhorst* cases on the issue of standing to challenge gender-targeted programs appear to conflict; advocates and attorneys anticipate further challenges²³.

Subsequently, in *Coalition of Free Men v. State of California*, the Coalition and one of its members sued the state of California seeking to have 81 statutes and four regulations creating services and funding specifically directed to meeting women's needs declared unconstitutional. Examples include the Office of Women's Health, breast cancer screening, domestic violence protection, visitation rights for incarcerated mothers, job training for women in nontraditional employment, and an ombudsperson for women veterans. They based their claim for standing to sue in the *Connerly v. State Personnel Board* decision that had addressed the use of gender- or race- based classifications, and filed their suit as both a taxpayer action and a citizen action to prevent an illegal expenditure of public funds. The California Court of Appeals, however, found that CFM and its members did not have standing to sue because they had not claimed a personal interest or involvement with any of the targeted statutes and, therefore, had not demonstrated that they had suffered or been threatened with harm. The law under which the Coalition filed, according to the Court of Appeals, "does not authorize general challenge with no reference to specific application of statute." In April 2005, the Coalition filed an appeal for rehearing with the Court of Appeals, which denied that request in late June²⁴.

A class action lawsuit (*Maegan Black et al. v. State of California et al.*) filed in 2005 by members of the Coalition of Free Men and others against the state, state and county agencies and officials, an anti-violence coalition and a battered women's shelter seeks to allow men to use state- and county-funded programs providing domestic violence services and child visitation with incarcerated parents. The plaintiffs in that case cite the *Connerly* decision as precedent and argue that it has rendered California Code section 11139 unconstitutional; a legal victory could

extend the reach of the *Connerly* findings beyond the education, employment and contracting contexts to all gender- (or race-) targeted government services²⁵. In addition, the necessity of mounting defenses in these lawsuits has consumed scarce resources of time and money for chronically under-funded shelters as well as the state.

Particularly since Michigan law appears to offer no protection directly comparable to section 11139 of the California Government Code, programs providing services for women such as breast cancer screening and domestic violence services could potentially be at risk here, depending on the direction of judicial involvement and interpretation of the MCRI, if adopted. Until recently, the website of the MCRI campaign declared, as part of its mission statement, that the ballot initiative is intended to apply to “all functions and all levels of state and local government in Michigan”²⁶. The initiative does not provide for exceptions for the health and well-being of affected populations, but instead seeks a blanket ban on programs that discriminate or grant preferential treatment based on race, gender and ethnicity.

Immediately following the passage of Prop. 209, the State of California stopped collecting information about race, gender and ethnicity in employment and contracting²⁷ at the behest of then Governor Pete Wilson. This resulted in a four-year break in the availability of data that could be used to analyze the absence or presence of discrimination in state-funded and -administered programs²⁸. In 2001 the California Appellate Court in *Connerly v. State Personnel Board* and the California State Legislature restored race and gender data collection, enabling the state to resume attention to disparities in opportunity in public education and employment²⁹.

During the hiatus, the California State Colleges and Universities continued to collect data internally, and institutional analysis found that hiring of women faculty dropped immediately and dramatically on a number of campuses³⁰. A report issued in May 2005 by four faculty members at the University of California Davis reveals that the peak in hiring of women faculty members in the

University of California system overall occurred in 1994 when 37% of new faculty hires were women. By 1999, it had declined to 25%. At Davis, the percentage of women hired as new faculty members dropped from 52% in 1994 to 13% in 1998. According to Prof. Gyöngy Laky, one of the authors of the report, “here we were [at Davis], preferring and hiring white men at rates of 87%, way beyond their 59% presence in available pools, when for almost a decade more than 45% of all Ph.D.’s had been granted to women. With Prop. 209, we had, it seemed, created an effective affirmative action program for white men³¹.”

Hiring of women faculty in the University of California system began to increase after the Joint Legislative Audit Committee authorized the State Auditor to investigate hiring practices and issue a report, which was released in 2001³²; and Senator Jackie Speier, chair of the Senate Select Committee on Government Oversight, convened three legislative hearings on gender inequity in UC system faculty hiring in 2001, 2002, and 2003. Faculty activism also played a role in focusing the attention of individual campuses and central system offices on low rates of hiring. These activities increased recognition of the need for faculty and administrators to understand that federal anti-discrimination and affirmative action laws remain in effect, even following the passage of Prop. 209; the necessity for vigilance against sex discrimination in the hiring process; the importance of making a significant proportion of hires at the assistant professor level, where women are better represented; and the importance of work/life policies that take women’s family responsibilities and life experiences into account. Although hiring of women faculty in the University of California system has now, on average, recovered to pre-209 levels, it remains far below the availability of women in the employment pools and reflects a decade of lost opportunity to make further progress³³. Nationally, women held 35% of all faculty positions in 1995 and 39% in 2003, with wide variation by rank and institutional type³⁴.

In addition, the number of women and minorities enrolled in and completing medical, computer science and technology programs and entering the workforce declined following California’s adoption of Prop. 209, probably because of the

elimination of recruiting, admissions, outreach, counseling, tutoring and policies that take race and gender into account in order to increase participation³⁵. Enrollments in these programs have only recently approached the levels of 10 years ago³⁶.

Women-owned businesses in California reported an immediate decline, not only in the direct awarding of state government contracts after Prop. 209 passed, but also in the number of bid opportunities communicated³⁷. Affirmative action programs are used to ensure transparency and openness in the bidding process, as well as to encourage outreach and participation. After Prop. 209 was implemented, subcontracting opportunities were no longer distributed to the directory of registered women- and -minority owned businesses, leading to a sharp decline in the opportunities available to disadvantaged business enterprises³⁸. Between 1997 and 2001, minority- and women-owned businesses experienced a 22% drop in government contracts, 26% for minority-owned businesses and 7% for women-owned businesses³⁹.

Prop. 209 has not only affected state- and local-level contracting, however. Despite language guaranteeing the protection of programs required to maintain compliance with federal guidelines⁴⁰, a recent California Supreme Court decision found that certain state programs enacted to remedy past discrimination and maintain compliance with federal funding requirements violated Prop. 209⁴¹, which may further reduce contracting opportunities.

In Michigan there are no longer participation requirements for Disadvantaged Business Enterprises in state contracting, nor is such participation tracked for exclusively state-funded programs⁴². Participation goals continue, however, and data collection is required for federally funded programs. In 2004, Disadvantaged Business Enterprises received 10.76% of the Michigan Department of Transportation's federally funded highway contracts. Women received 6.79% of such federally funded contracts⁴³. As noted above, the California Supreme Court has found that, under Prop. 209, the federal government would have to threaten to revoke state funding for contracting in

order for the state to be able to continue reaching out to women contractors. Should this standard be applied in Michigan, the impact of the MCRI on women-owned businesses could be severe⁴⁴.

A steep and rapid decline in the percentage of women employed in the skilled trades has been another apparent consequence of Prop. 209. "While the percentage of women employed in California's construction industry rose 26% from 1990 to 1996 [to a high of 2.6%!], this percentage dropped 33% after the passage of Proposition 209," even though nationally, the percentage of women in the trades increased during those years⁴⁵. In addition, the percentage of female registered apprentices dropped sharply, from 11.3% in 1996 to 6.8% in 2004, the most recent year for which data are available⁴⁶. Between 1995 and 2004, the percentage of men working in California's construction industry increased by 23.7%⁴⁷. Tradeswomen report continuing sexual harassment and other forms of hostility, as well as the belief among many employers that, after the passage of Prop. 209, federal non-discrimination or affirmative action requirements are no longer a consideration⁴⁸.

Initially, Prop. 209 implementation efforts dealt with the elimination or amendment of state-level affirmative action programs, but subsequent legal challenges have targeted local and municipal programs as well. California courts have consistently construed the Proposition broadly, striking down not only those programs that were designed for women, or racial and ethnic minorities, or included participation goals, but also those that sought to remedy documented patterns of discrimination. In Michigan, the intended scope of the initiative similarly includes all functions and all levels of state and local government⁴⁹. Should the MCRI pass, and implementation proceed according to the intent of the amendment, the following kinds of programs could be vulnerable:

- Education outreach programs that take place using public facilities or funding and that specifically target participants based on race, sex or ethnicity, including science, math or technology programs for girls.

- Summer and after-school programs for either boys or girls, like technology camps for girls.
- Recruitment and support programs for high school and community college students in career education programs that are nontraditional for their gender, such as men in nursing and early elementary education or women in engineering or the skilled trades.
- Apprenticeship, education and training programs for non-traditional occupations.
- Higher education funding for minority health professionals, who, along with women, are more likely to practice in under-served communities.
- Outreach and funding for women and minority math, science and technology teachers.
- Review systems designed to monitor and address barriers to achieving full participation, such as discrimination based on race, ethnicity, gender, age, or disability.
- Government outreach programs that ensure that women- and minority-owned businesses have a fair chance to secure government contracts.
- Scholarships, fellowships and grants at all levels of education that take gender, race, ethnicity or national origin into account.
- Gender-specific community and public health programs, such as breast, cervical and prostate cancer screening, breastfeeding promotion, or prenatal smoking cessation.
- Domestic violence programs.
- Efforts to ensure adequate representation of women and minorities on boards and commissions, including advisory boards dealing with corrections, education and public health.⁵⁰

Although the passage of Prop. 209 has not yet resulted in challenges to single-sex athletic teams, certain community and school-based programs, if publicly supported, could be subject to the MCRI, depending upon its interpretation by the courts.

The kinds of programs that have been lost or altered in California are still very important to women and families. Women have made significant gains in employment and education during the last thirty years, helped along by civil rights laws that forbid discrimination and require efforts to promote equal opportunity. Nonetheless, there are still many fields, often the best paying, where women have made only small inroads. The average woman working full time still earns less than the average man, which results in the loss of much-needed income for women and their families⁵¹. Additionally, women's life experiences can differ from men's in ways that constrain their educational and employment opportunities and cause them to need particular services from government, employers, or educational institutions more often than men do. Some of the barriers women face more often than men include:

- Being single parents,
- Being impoverished by divorce,
- Having primary responsibility for child care, elder care and home-making,
- Experiencing domestic violence, sexual assault or sexual harassment as obstacles to education and employment,
- Being involved in the welfare system, which supports only very limited education,
- Receiving lower wages, and
- Facing these barriers in addition to the impact of racial or ethnic discrimination.

Women in Michigan who work full-time, year round earn \$.67 to every dollar earned by a comparably employed man, ranking Michigan 49th among the states for gender equality in wages⁵². Because of the large Michigan wage gap, higher education is particularly important for women. With only a high school diploma, a Michigan woman working full-time, year-round earns \$25,400, while a man earns \$38,700. A college degree improves income for both men and women, though women continue to lag. While a man with a four-year college degree earns \$60,100, a similarly educated woman earns \$42,000, only slightly

more than a man without a college degree⁵³. National studies have found that even after adjusting for education, experience, job classification and union membership, there is a portion of the wage gap that can be explained only by sex discrimination⁵⁴.

Women's wages are critical not only for their own well-being, but for their families'. As men's wages have failed to keep pace with inflation in the last 35 years⁵⁵, families have come to rely on two incomes in order to reach or remain in the middle class⁵⁶. In fact, increases in real income for families since 1979 are primarily the result of women entering the workforce⁵⁷. In Michigan, the loss of manufacturing jobs is accelerating these trends.

Recent concern that women are out-stripping men in college enrollment "masks tremendous differences by academic level, age, race/ethnicity, and income"⁵⁸. Among white, middle- or upper-class 18 to 24-year-olds, women and men are very close to parity⁵⁹. The overall difference between women and men is largely the result of two factors: a large number of women over 25 who have returned to school (often to improve their earning potential), and low enrollment levels by African American, Native-American and Hispanic men, particularly men of low socio-economic status. In addition, men continue to earn more professional and doctoral degrees than women⁶⁰. Women's participation also varies greatly by field.

Despite advances in women's enrollment overall, Michigan ranked 36th in the nation in 2000 for the proportion of its female population with a four-year college degree or more⁶¹. While more Michigan women than the national average complete one to three years of college, fewer women than the national average complete four or more years. For many women, access to childcare and to services that take women's experiences into account is crucial to their ability to complete a degree⁶².

Women still lag significantly behind men in physical sciences, technology, engineering, mathematics and business degrees, particularly at advanced levels, and therefore in the jobs for which those degrees are required, as well as in the skilled trades and other heavily “male” jobs. “By 2010, one in four new jobs will be ‘technically oriented,’ or involve computing, however women fall far behind in earning computer technology degrees and working in computer technology related professions⁶³.” Not only does that shortfall keep women from well-paying, high-demand careers with which they can support themselves and their families, but it also deprives the state and the nation of the brainpower and training so necessary to drive an information-based economy⁶⁴ and compete in the global marketplace. “Current workforce projections indicate that unless more women and minority men are attracted to science, the United States will not have the trained personnel necessary to meet its needs⁶⁵.” The difference in preparation for technology-based jobs between men and women is one cause of the large wage gap between men’s and women’s earnings in Michigan and a significant barrier to economic growth.

Evidence from California suggests that Prop. 209 has eroded access to services, education, job training, and other opportunities for women. There is ample evidence to support expectations that passage of the MCRI in Michigan would result in a similar pattern of lost services and restricted opportunities. Redevelopment of the Michigan economy from a manufacturing to a knowledge base will require a highly qualified and technologically educated workforce, in which women’s talents and skills will be indispensable. Full access to opportunity strengthens not only women, but also their families, communities, and the state.

¹ “Mission Statement.” (n.d.). Retrieved June 2004, from Michigan Civil Rights Initiative Web site: www.michigancivilrights.org.

² Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.

³ Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.

⁴ Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 – 1688.

⁵ Executive Order 11246 of Sept. 24, 1965, appears at 30 FR 12319, 12935, 3 CFR, 1964-1965 Comp. p. 339.

⁶ Michigan Elliott-Larsen Civil Rights Act, Act 453 of 1976, MCLA § 37.2101 et seq., M.S.A. § 3.548(101) et seq.

⁷ State Constitution (Excerpt) Constitution of Michigan of 1963; Const. 1963, Art. I, § 2, Eff. Jan. 1, 1964

⁸ "Proposition 209," passed November 5, 1996, enacted, now embodied in the California Constitution, Article I, Section 31.13.41. Hereafter Prop. 209.

⁹ Women are considered to be underrepresented in particular fields, not in education overall. Compounded effects of gender, race and income also affect eligibility for particular programs. California Education Code 69560 et. seq: The CAL-SOAP program was authorized to fund programs "designed to increase the accessibility of postsecondary educational opportunities to low-income and ethnic minority elementary and secondary school students". These programs included reading, math, science, SAT preparation, academic preparation and college outreach and information. CAL-SOAP now specifies "low-income, elementary and secondary school students or geographic regions with documented low-eligibility or college participation rates, and who are first in their families to attend college." California Education Code 8630 and 8631: The California Summer Science and Technology Academy was "developed and operated to identify public high school pupils with high academic potential in mathematics, science, and technology, with an emphasis on females and minority members, to participate in university-based research programs." Post Prop. 209, reference to females and minority members was removed from programs.

¹⁰ Proposition 209 clearly 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." This includes outreach programs that specifically target race, gender and ethnicity. The Early Academic Outreach Program, which includes summer school, after school and weekend classes targeted low-income and ethnically underrepresented students pre-209. Now targets "under-resourced communities." California Education Code 8630 and 8631: The California Summer Science and Technology Academy was "developed and operated to identify public high school pupils with high academic potential in mathematics, science, and technology, with an emphasis on females and minority members, to participate in university-based research programs." Post Prop. 209, reference to females and minority members was removed from programs.

¹¹ *Connerly v. State Personnel Board* No. C032042, Cal. Ct. App., 3rd Dist., 9/4/2001

¹² California Labor Code 1777.5 and 3075.1 governed affirmative action in apprenticeship programs. California Public Contract Code 10115-10115.15. Governor Wilson issued an executive order March 10, 1998 that ordered state agencies to "cease any enforcement of the minority and women business enterprise participation goals and the good faith effort requirements related thereto under Public Contract Code 10115 et seq;" "In the absence of affirmative action programs and monitoring, employers have been left at best without direction or motivation to provide equal opportunity for tradeswomen. At worst, the vestiges of the male-dominated construction industry have returned. While federal affirmative action programs remain intact, some contractors returned to old practices of exclusion. Some employers believe and have told tradeswomen that because there is no more affirmative action, they no longer have to hire women." "Proposition 209 and the Decline of Women in the Construction Trades." The Discrimination Research Center and Equal Rights Advocates. June 2004.

¹³ California Health and Safety Code, Sections 128330-128370; 128375-128401; 128425-128450 now specify under-representation in profession as qualifying attribute. Formerly known as Minority Health Professionals Education Foundation, now Health Professions Education Foundation.

¹⁴ California Codes, Education Code Section 69640-69656. The Extended Opportunity Programs and Services (EOPS) now specify "socioeconomic handicaps" and language, social, and economic disadvantages. Education Code §§ 87100, et seq. were found to violate Prop. 209 on 9/4/2001. This section governed the "steps that the district will take in eliminating improper discrimination or preferences in its hiring practices" (Section 87102. (a)); The Millennium Scholarship Program, established in 2000 at UC San Diego was cancelled because it was in violation of Prop 209. Schevitz, Tanya. "Audit Finds Campus Needs Extra \$1 Million to Pay for Violating Affirmative Action Ban." *San Francisco Chronicle*. Tues. Sept. 11, 2001. Page A-3.

¹⁵ Percentage goals and outreach, known as "good faith efforts," requirements in regard to women- and -minority owned businesses in the California Public Contract Code were found to violate the California Constitution, Article I, Section 31, known as Prop. 209: *Connerly v. State Personnel Board* No. C032042, Cal. Ct. App., 3rd Dist., 9/4/2001

¹⁶ After Prop. 209 passed, Governor Pete Wilson filed suit against five state agencies that maintained mandated affirmative action programs. Three were upheld, and two disallowed (women and minority owned business participation goals and bond service contracts). Ward Connerly filed an appeal (then-Governor Gray Davis chose not to appeal), and in *Connerly v. State Personnel Board* the Court reversed the lower court decision, finding all five state agencies in violation of Prop. 209.

¹⁷ The National Coalition of Free Men then filed suit against the State of California regarding more than 30 programs that target women based on the finding in *Connerly v. State Personnel Board* (NCFM LA v. State of California, pending hearing date).

¹⁸ *Blumhorst v. Haven Hills, Inc.; House of Ruth, Inc.; Rainbow Services, Ltd.; Young Women's Christian Association of Glendale, California; Jewish Family Service of Los Angeles; Haven House, Inc.; Peace and Joy Care Center; Su Casa*

Family Crisis and Support Center; Southern California Alcohol and Drug Programs, Inc.; Domestic Violence Center of the Santa Clarita Valley; State of California; County of Los Angeles, et al. See also Fukuroda, Marci. "Men's Groups Threaten Women's Shelters Through Litigation" UCLA Women's Center Newsletter, Spring 2004. <http://www.women.ucla.edu/Newsletter/Shelters.htm>

¹⁹ California Health and Safety Code Sections 124250 *et seq.*, California Battered Women Shelter Program

²⁰ The Court initially found that funding for battered women's shelters was protected under California Government Code 11139, and that the claimants lacked proper standing to file the suit. (October 2003) The Appellate Court declined to find on the merits of the case, and upheld the lack of standing of the claimants (filed 2/14/05). The claimant has indicated intent to re-file, and to expand the challenge to other areas. Additionally, though the suit was filed against 9 individual shelters, the challenge was based on the funding, which was specifically authorized for the provision of services to women and children by the State of California. The Claimant challenged the State to cease funding in a separate suit (*Coalition of Free Men v. The State of California*). The decision in *Connerly v. State Personnel Board*, which stems from Prop 209, is cited as supporting the suit.

²¹ California Government Code 11139, which states that "This article shall not be interpreted in a manner that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women."

²² The trial court, however, had upheld the constitutionality of that statutory provision.

²³ On April 27, 2005, Blumhorst petitioned the Supreme Court of California for review, which was denied.

²⁴ *Coalition of Free Men et al. v. State of California*, B172883, Court of Appeal of California, Second Appellate District, Division One, 2005 Cal. App. Lexis 715, decided April 20, 2005.

²⁵ Maegan Black; David Woods; Gregory Bowman; Patrick Neff; and Ray Blumhorst v. State of California; Sandra Shewry; California Department of Health Services; Henry Renteria; California Office of Emergency Services; W.E.A.V.E. Inc.; The Domestic Violence and Sexual Assault Coalition, Inc.; County of Los Angeles; County of Los Angeles Department of Health Services; Thomas L Garthwaite, M.D.; California Department of Corrections; Jeanne S. Woodford and others, Superior Court of the State of California, County of Sacramento, Case No. 05CS01530, filed October 28, 2005.

²⁶ "Mission Statement." (n.d.). Retrieved June 2004, from Michigan Civil Rights Initiative Web site: www.michigancivilrights.org.

²⁷ On March 10, 1998 the Governor issued executive order W-172-98 that ordered that state agencies cease "all actions, programs, and regulations which seek to monitor, promote or comply with the minority or women business enterprise goals or the good faith efforts related thereto." This governed the collection of data on employment and contracting in regards to gender, race or ethnicity. The order was upheld in *Barlow v. Davis*, 6/11/1999: Alameda County Super. Ct. No. 796308-9

²⁸ "Proposition 209 and the Decline of Women in the Construction Trades." The Discrimination Research Center and Equal Rights Advocates. June 2004.

²⁹ In 2001 the California Assembly restored data collection after the Appellate Court found that all data collection did not violate either Prop. 209 or equal protection, (*Connerly v. State Personnel Board*), a decision that was affirmed by Governor Schwarzenegger as recently as March 2004 in executive Order S-6-04. He stated that "under both state and federal law, state agencies have a responsibility to maintain statistical information on the composition of their workforce, and state agencies are required by federal law to identify racial, gender and ethnic under-representation in their workforce. I fully expect that all state agencies will comply with this responsibility and maintain meaningful information on the composition of the state workforce." Governor Schwarzenegger's veto of AB 227 <http://www.cde.ca.gov/re/lr/ga/vetoed2004.asp>

³⁰ "New Appointments of Ladder Rank Faculty at the University of California, Pre and Post Proposition 209." Office of Academic Advancement; Office of the Provost, The University of California. December 2000; Greenwood, M.R.C. "Testimony to Senate Select Committee on Government Oversight." University of California, Santa Cruz. <http://www.ucop.edu/acadadv/testimony.html>

³¹ West, Martha S., Laky, Gyöngy, Lokke, Kari and U, Kyaw Tha Paw. "Unprecedented Urgency: Gender Discrimination in Faculty Hiring at the University of California," 21. May 2005. <http://www.law.ucdavis.edu/PDFs/unprecedented.pdf>

³² California State Auditor. *University of California: Some Campuses and Academic Departments Need to Take Additional Steps to Resolve Gender Disparities Among Professors*. Bureau of State Audits 2000-131. May 2001.

³³ *ibid.*

³⁴ National Center for Educational Statistics. Digest of Education Statistics Tables and Figures 1998, Table 226 contains 1995 data. National Center for Educational Statistics. Digest of Education Statistics Tables and Figures 2005, Table 228 contains 2003 data. Source: U. S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS).

³⁵ Babco, Eleanor and Ellis, Richard. "Women in Science and Technology: the Sisyphean Challenge of Change" STEM Workforce Data Project: Report 2. Commission on Professionals in Science and Technology. 2004; Hudgings, Janice, Humphreys, Sheila and Hernan, Patrick. "A Six-Year Picture of Women Graduate Students in EECS," unpublished paper, UC Berkeley and Mount Holyoke, 1999. <http://mtholyoke.edu/~jhudging/eeeswomen.html>; American Association for University Women. "Tech Savvy: Educating Girls in the New Computer Age." 2000; "California's Future: It Starts Here--UC's

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<http://www.universityofcalifornia.edu/itstartshere/report/fullreport.pdf>; The California Council on Science and Technology. "Issues Impacting Baccalaureate Degrees in Science and Engineering." February 2002. www.ccst.us/ccst/pubs/cpa/download/CPA_4_CCST.pdf

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