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, submitted to be on the ballot in November 2006, that would prohibit all state and local government entities, including schools, from discriminating or granting preferential treatment based on race, sex, color, ethnicity or national origin in public employment, public education or government contracting. 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, existing state and federal laws are clear and adequate. Title IV of the 1964 federal Civil Rights Act protects against discrimination on the basis of race, color or national origin in any program receiving federal funding; Title VII prohibits employment discrimination based on race, color, religion, sex and national origin; and 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 status. Title IX of the Education Amendments of 1972 prohibits sex discrimination in education. The Equal Protection Clause of the Michigan State Constitution duplicates the federal equal protection clause, and guarantees the equal protection of the laws. Executive Order 11246 also forbids discrimination and requires affirmative action for certain classes of workers at federal contractors and subcontractors. Some municipalities protect additional groups against discrimination.

In California, Proposition 209, a nearly identical initiative passed in 1996, has been used to erode 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 have been challenged, eliminated or amended. Affected programs include:

- Elementary and high school level reading, science and math programs for female and minority students.
- Summer and after-school programs targeted to either girls or boys, or to children in racial, national or ethnic groups.
- Outreach and funding for women and minority math, science and technology teachers.
- Programs helping women and minorities become apprentices in the skilled trades.
- Higher education funding for minority health professionals.
- Scholarships, fellowships and grants for women and minorities at all levels of education.
- 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 businesses.

Passage of ballot initiatives is only the first step in determining the policy implications; 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 the initiative. Ward Connerly, the sponsor of Prop. 209 and, later, the Michigan Civil Rights Initiative, joined him in this suit and continued to pursue the case after Governor Gray Davis defeated Pete Wilson. The 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 race) serve a compelling government purpose and be narrowly tailored to achieve that purpose. The court’s decision confirmed that, under California law (unlike federal law), gender classifications are likewise subject to this strict scrutiny standard. Connerly v. Personnel Board declares that, except in narrow circumstances, Proposition 209 would invalidate those California statutes that employ gender or race based classifications for the purpose of targeting programs or services.

Following this interpretation by the California courts, breast cancer screening, battered women’s shelters and other domestic violence programs are some of the programs that faced legal challenges in suits filed by the National Coalition of Free Men, Los Angeles Chapter. In Blumhorst v. Haven Hills, the NCFM directly sued battered women’s shelters for violating equal protection, and sought the elimination of state funding as a remedy. Funding for battered women’s shelters was preserved by the courts and because of a California statute protecting programs that serve women and minorities in order to conform to state anti-discrimination law, but advocates and attorneys anticipate further challenges.

Subsequently, in NCFM LA v. State of California, the coalition has challenged all programs providing services or funding for women in California. They have based their claims in the Connerly v. Personnel Board decision addressing the use of gender or race based classification. A decision is still pending in this case. As Michigan law offers no protection comparable to the California statute, programs providing services for women such as breast cancer screening and domestic violence services and prevention could well be at risk here, depending on the direction of judicial involvement and interpretation. The MCRI is intended to apply to “all functions and all levels of state and local government in Michigan.” It does not provide for exceptions for the health and well-being of affected populations, but instead seeks a blanket ban on targeted programs based in race, gender and ethnicity.

Immediately following the passage of Prop. 209, the state stopped collecting information about race, gender and ethnicity in employment and contracting at the behest of then Governor Pete Wilson. This resulted in a break in the availability of data that could be used to analyze the absence or presence of discrimination in state-funded and -administered programs.

The California State Colleges and Universities continued to collect data internally, however, and institutional analysis found that hiring of women faculty dropped immediately and dramatically on a number of campuses. 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 men.”

In addition, the number of women and minorities enrolled in and completing medical, computer science and technology programs and entering the workforce declined, probably because of the elimination of recruiting, admissions, outreach, counseling, tutoring and policies that take race and gender into account in order to increase participation. Across all affected fields and campuses, hiring and enrollment have only recently approached the levels of 10 years ago, reflecting a decade of lost opportunities to make further progress. In 2001 the California Appellate Court and California State Legislature restored race and gender data collection, enabling the state to resume attention to equality of opportunity.

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 communicated. 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 enterprises. 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 guidelines, a recent California Supreme Court decision applied Prop. 209 and found that programs enacted to remedy past discrimination and maintain compliance with federal funding requirements were in violation, 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 programs. Participation goals continue, however, and data collection is required for federally funded programs. In 2004 Disadvantaged Business Enterprises received 10.76% of Michigan Department of Transportation federally funded highway contracts overall. Women received 6.79% of federal contracts. According to the California Supreme Court, 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 on women-owned businesses could be severe.
Another apparent consequence of Prop. 209 has been a steep and rapid decline in women employed in the skilled trades. “While the number of construction jobs [in California] have increased since 1996 ...the percentage of women in the trades has dropped by a third.” Nationally, however, the percentage of women in the trades has increased during those years.

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 is all functions and all levels of state and local government. Should the MCRI pass, and implementation proceed according to the intent of the amendment, the following kinds of programs could be vulnerable:

- Gender-specific community and public health programs, such as breast, cervical and prostate cancer screening, breastfeeding promotion, or prenatal smoking cessation.
- Domestic violence programs.
- Education outreach programs that take place using public facilities or funding and 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 camp 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 or women in 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 for women and minorities at all levels of education.
- Efforts to ensure adequate representation of women and minorities on boards and commissions, including advisory boards dealing with corrections, education and public health.

Although the passage of Prop. 209 has not yet resulted in challenges to single-sex athletic teams, community and school-based programs, if publicly supported, could be subject to the MCRI, depending upon 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 families\textsuperscript{41}. 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 49\textsuperscript{th} among the states for equality\textsuperscript{42}. 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 woman earns $42,000, only slightly more than a man without a college degree\textsuperscript{43}. 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 only be explained by sex discrimination\textsuperscript{44}.

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 years\textsuperscript{45}, families have come to rely on two incomes in order to reach or remain in the middle class\textsuperscript{46}. In fact, increases in real income for families since 1979 are primarily the result of women entering the workforce\textsuperscript{47}. 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\textsuperscript{48}.” Among white, middle- or upper-class 18 to 24-year-olds, women and men are very close to parity; however, gender gaps among African-American, Native
American and Hispanic students are large, particularly among low-income students. This results in an overall difference between women and men, which is largely the result of two factors: a large number of women who are over 25 and have returned to school (often to improve their earning potential), and low enrollment levels by African American and Hispanic men, particularly men of low socio-economic status. Men continue to earn more professional and doctoral degrees than women. Women’s participation also varies greatly by field.

Despite advances in women’s enrollment over all, Michigan ranked 36th in the nation in 2000 for the proportion of its female population with a four-year college degree or more. 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 degree.

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 professions.” 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 economy 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 needs.” 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.

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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.


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.

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.

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.

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

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. The National Coalition of Free Men then filed suit against the State of California regarding more than 30 programs that target women based on this finding (NCFM LA v. State of California, pending hearing date).
Blumhorst v. Haven Hills (challenging domestic violence shelters for women, suing shelters directly) and NCFM LA v. State of California (challenging all programs targeted to women).


The Court initially found that funding for battered women’s shelters was protected under California Government Code 11039, 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 has challenged the State to cease funding in a separate suit (NCFM vs. The State of California). The decision in Connerly v. Personnel Board, which stems from Prop 209, is cited as supporting the suit.

California Government Code 11039

Fukuroda, Marci. Telephone Interview. 2/16/05

Expected by Summer 2005: Oie, Susan, Telephone Interview. 2/16/05


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


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. 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/ir/ga/vetoed2004.asp


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