

Much of the research on Proposition 209 (California's anti-affirmative action initiative passed in 1996) in the past decade has focused on the impact of the initiative on higher education admissions. There has been comparatively little research examining the effect of the initiative on public employment and contracting, and even less that looks at the secondary socio-economic consequences of the initiative. These issues are becoming increasingly crucial to examine as supporters of Proposition 209 seek to place similar initiatives on the ballot in a number of other states.

Our symposium, "Economic Opportunity: The Labor and Employment Impact of Proposition 209," focuses on these largely unexplored research areas. The range of exciting and innovative presentations today merge a discussion of existing scholarship with new research on how the socioeconomic conditions of women, people of color, and California as a whole have been impacted by changes brought by Proposition 209. This symposium seeks to provide stimulating and engaging presentations that will not only deepen our insight into the long-term repercussions of Proposition 209, but also initiate thought-provoking discussions of how to best address the future of equal opportunity in California and across the nation.

Today's symposium is organized by the California Coalition to Analyze the Impact of Proposition 209 (Impact 209 Coalition), a broad-based coalition of advocates, organizations, academics, scholars, students and other individuals formed to initiate analysis on the statewide educational and economic harms resulting from the 1996 passage of Proposition 209. The impetus for this symposium arose out of the Impact 209 Coalition's initial exploration into research on the wider effects of 209 on the State.

We would like to take this opportunity to acknowledge and thank our funders and co-sponsors. This event was made possible through the generous support of the Fulfilling the Dream Fund and the Akonadi Foundation. This event is also co-sponsored by the following UCLA departments, community groups and student organizations:

UCLA Departmental and Community Co-Sponsors

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- UCLA College of Letters and Science, Division of Social Sciences
- UCLA Institute for Research on Labor and Employment
- UCLA School of Law Critical Race Studies
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- Muslim Law Students Association
- SHARE JD
- South Asian Law Students Association

Symposium Agenda

8:00 a.m. **REGISTRATION AND CONTINENTAL BREAKFAST**

9:00 a.m. **OPENING SESSION**

Welcome

- *Reynaldo Macías*
Acting Dean, Division of Social Sciences, The UCLA College
- *Eva Paterson*
President, Equal Justice Society

PANEL 1: ACCESS TO CONTRACTS: THE STATE OF MBEs AND WBEs POST-209

Substantial empirical work has been done on the effect of Proposition 209 on minority-(MBE) and women-(WBE) owned business enterprises over the past 10 years. Panelists will discuss their research on the state of MBEs and WBEs post-209 as well as provide insight into 209's qualitative impact on specific subsets of these groups, including contractors working with Caltrans and the Port of Oakland.

Panelists:

- *Robert W. Fairlie*, Professor of Economics, UC Santa Cruz
- *Dave Keen*, Managing Director, BBC Research & Consulting and Consultant for Caltrans Study
- *Tim Lohrentz*, Program Manager, Insight Center for Community Economic Development (formerly the National Economic Development and Law Center),
- *Bernida Reagan*, Director of Social Responsibility, Port of Oakland

Moderator: *Maria Blanco*, Executive Director, Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, UC Berkeley School of Law

11:00 a.m. **PANEL 2: PUBLIC EMPLOYMENT IN CALIFORNIA POST-209: A CASE STUDY OF THE UNIVERSITY OF CALIFORNIA**

The University of California is a prime example of 209's impact on public employment in California. From faculty and staff diversity to the pipeline between UC admissions and the face of California's workforce, this panel will cover the range of issues faced by the University of California, and in turn public employment in California, after 209.

Panelists:

- *Rosina Becerra*, UCLA Associate Vice Chancellor for Faculty Diversity and Professor of Social Welfare and Policy Studies in the School of Public Affairs
- *Karume James*, Organizer, American Federation of State, County and Municipal Employees (AFSCME)

- *Mandla Kayise*, University Relations Chair, UCLA Black Alumni Association and Co-Chair, Alliance for Equal Opportunity in Education
- *Bob Laird*, UC Berkeley Director of Undergraduate Admissions (1993-1999) and Author of “The Case for Affirmative Action in University Admissions”

Moderator: *Darnell Hunt*, Director, Ralph J. Bunche Center for African American Studies, UCLA

12:30 p.m.

LUNCH AND LUNCHTIME PRESENTATION

Lunch for registered guests will be served in the Sequoia Room, Redwood Room and Downstairs Lounge. The presentation will start at 1pm in the California Room.

“Compelling State Interest: A Contra-History of California Without Proposition 209”

- *John William Templeton*, President and Executive Editor of eAccess Corp.
- Introduction by *Monique Morris*, Senior Research Fellow, Thelton Henderson Center for Social Justice, UC Berkeley School of Law

This presentation contrasts the trajectory of demographic trends for African-Americans in California that existed before the passage of Proposition 209 with the actual trends that occurred afterwards. Utilizing extensive data from California, Florida and Washington, Mr. Templeton envisions what California would have looked like without the passage of Proposition 209.

1:30 p.m.

PANEL 3: THE OPPORTUNITY GAP: EXAMINING THE IMPACT OF 209 ON SPECIFIC COMMUNITIES

Continuing the discussion begun during Panel 1 on the broad effect of Prop. 209 on MWBEs, this panel highlights issues facing particular communities after Prop. 209 eliminated race and gender based preferences in contracting. Panelists will discuss 209’s effect on disadvantaged business enterprises, with a particular focus on women, African American and Asian American business communities. Panelists will also address the need to overcome certain obstacles before race- and gender-based contracting can be adopted.

Panelists:

- *Justin Marion*, Assistant Professor of Economics, UC Santa Cruz
- *Monique Morris*, Senior Research Fellow, Thelton Henderson Center for Social Justice, UC Berkeley School of Law
- *Paul Ong*, Professor, School of Public Affairs and Asian American Studies, UCLA
- *Michael Sumner*, Research Fellow, Thelton Henderson Center for Social Justice, UC Berkeley School of Law

Moderator: *Ruth Milkman*, Director, UCLA Institute for Research on Labor and Employment

Symposium Agenda

3:00 p.m. **PANEL 4: COMBATING 209 IN THE COURTS: INNOVATIVE LEGAL STRATEGIES TO CHALLENGE PROP. 209**

Through presentations on both research and litigation tools, panelists in this session will discuss how to maintain equal opportunity programs in the face of Prop. 209 and explore the legal landscape for local and state equal opportunity programs.

Panelists:

- *Sumi Cho*, Professor of Law, DePaul University College of Law
- *Araceli Martínez-Olguín*, Women's Rights Project Fellow, National ACLU
- *Bradley Phillips*, Munger, Tolles & Olson LLP
- *David Oppenheimer*, Professor of Law, Golden Gate University
- *Christopher Westhoff*, Los Angeles Assistant City Attorney and Public Works General Counsel

Moderator: *Cheryl Harris*, Professor, UCLA School of Law

4:30 p.m. **PANEL 5: GLOBAL RESPONSES TO AFFIRMATIVE ACTION: THE STATE OF EQUAL OPPORTUNITY IN BRAZIL, FRANCE, AND THE EUROPEAN UNION**

Panelists will explore international responses to affirmative action by discussing their work on Brazil, France and the European Union and offering a comparative analysis of the United States.

Panelists:

- *Camila Morsch*, Associate Director and Senior Researcher, African American Policy Forum
- *Marie-Christine Pauwels*, Associate Professor, Research Center on English and American Studies (CREA), University of Paris
- *Sophie Robin-Olivier*, Professor of Law and Co-Director of the Center for European and Comparative Studies (CEJEC), University of Paris

Moderator: *Paule Cruz Takash*, Research Associate, UCLA North American Integration & Development (NAID) Center

5:30 p.m. **RECEPTION AND SCREENING OF DOCUMENTARY**

Arise: The Battle Over Affirmative Action (Firelight Media)

This groundbreaking short documentary film addresses the history and ongoing debates surrounding affirmative action.

6:00 p.m. **CLOSING SESSION**

Keynote Address

Thomas Saenz

Counsel to Mayor Antonio Villaraigosa, City of Los Angeles

Introduction by *Reynaldo Macías*, Acting Dean, Division of Social Sciences, The UCLA College

PANEL 6: IMPACT OF PROP. 209: THE FUTURE OF OPPORTUNITY

This final session will explore the larger landscape of equal opportunity both in California and across the nation. Panelists will discuss challenges and next steps to ensuring equal opportunity in the current political climate.

Panelists:

- *Greg Akili*, Convener, Alliance for Equal Opportunity in Education and Senior Political/Community Organizer, SEIU Local 1000
- *Ellen Buchman*, Field Director, Leadership Conference on Civil Rights
- *Vincent Pan*, Executive Director, Chinese For Affirmative Action
- *Thomas Saenz*, Counsel to Mayor Villaraigosa, City of Los Angeles

Moderator: *Eva Paterson*, President, Equal Justice Society and Co-Chair, Impact 209 Coalition

Speaker and Presenter Bios

GREG AKILI

Greg Akili has over 35 years of experience as a speaker, community leader, organizer and activist on a broad range of national, state and local issues. Mr. Akili is currently the Senior Political/Community Organizer for Service Employees International Union Local 1000. He is active in numerous community organizations, including serving as a Convener for the Alliance for Equal Opportunity in Education, Chair of African-Americans Against the War, and Executive Committee Member of Community Call to Action and Accountability. Mr. Akili has also worked extensively in politics, including as Deputy Coordinator for the Cleveland, Ohio Kerry/Edwards campaign, Special Assistant to the Speaker of the California Assembly Herb Wesson and Special Assistant to the Speaker of the California Assembly Antonio Villaraigosa. Mr. Akili holds a Bachelor's Degree in Political Science from the City University Los Angeles.

ROSINA M. BECERRA

Rosina M. Becerra is currently the UCLA Associate Vice Chancellor for Faculty Diversity and Professor of Social Welfare and Policy Studies in the School of Public Affairs. Her research focuses on policy issues relating to children and families. She has conducted large-scale evaluations for the State of California Department of Social Services on welfare reform (1995-1998) and Child Support (1998-2001). She is the author of over 60 articles and six books.

In addition to her research and publications, Dr. Becerra has held a number of administrative posts since she first came to UCLA in 1975. She has been the Associate Dean and Dean of the School of Social Welfare, Chair of the Department of Social Welfare, Chair of Chicano/a Studies, Director of the Center for Child and Family Policy Research, and Acting Director of the Institute for Industrial Relations.

Dr. Becerra has a BA in Mathematics and Chemistry, a Master's in Social Work (MSW), an MBA and a Ph.D. ('76) from the Heller School for Social Policy & Management at Brandeis University. She has served on the boards of numerous governmental and non-profit organizations. She is also a Heller School Alumni Board member.

MARIA BLANCO

Maria Blanco joined UC Berkeley Law School on July 1, 2007 as the first Executive Director of the Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity (Warren Institute). Ms. Blanco is a Boalt alumna ('84) who has more than 20 years of experience as a litigator and advocate for immigrants' rights, womens' rights and racial justice. She formerly served as the Executive Director of the Lawyers' Committee for Civil Rights of the San Francisco Bay Area.

As Executive Director of the Lawyers' Committee, Ms. Blanco launched initiatives to increase minority access to higher education, provide legal counsel for students in substandard schools, and convene African-American and Latino community leaders to discuss the impact of immigration reform. She regularly contributes to national and local media on school integration, the importance of an independent judiciary, and civil rights challenges in today's security climate. Ms. Blanco was also the co-chair of the California Coalition for Civil Rights, a group dedicated to building a progressive national agenda for civil and human rights.

Prior to her position at the Lawyers' Committee, Ms. Blanco served as the National Senior Counsel for the Mexican American Legal Defense and Educational Fund, was an attorney with Equal Rights Advocates, and a professor of law at Golden Gate University's School of Law.

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She has successfully litigated pivotal civil rights cases, such as *Davis v. San Francisco*, which brought women for the first time into the San Francisco Fire Department; and *Castrejon v. Tortilleria La Mejor*, which established that undocumented workers are covered by federal anti-discrimination laws.

ELLEN BUCHMAN

Ellen Buchman is Director of Field Operations for the Leadership Conference on Civil Rights and Leadership Conference on Civil Rights Education Fund (LCCR/LCCREF – www.civilrights.org). LCCR is the nation's oldest and largest national civil and human rights coalition. LCCREF, the education arm of the coalition, conducts public education and research around priority civil and human rights issues.

Ms. Buchman is a seasoned professional in grassroots organizing, outreach, public education, and political campaigns. She has worked for 17 years with a number of national and state-based organizations to develop effective grassroots outreach and education campaigns.

As director of LCCR/LCCREF's constituent group and grassroots outreach efforts, Ms. Buchman is responsible for constructing and managing multi-sectored coalition efforts at the state and regional levels. The field department that Ms. Buchman oversees spends its time developing strategies for the public education campaigns that support LCCR/LCCREF's priority policy issues, including but not limited to voting rights, education reform, federal judicial nominations, affirmative action, and immigration reform.

This includes managing and working to support coalition member organizations and allies in educating and mobilizing their respective members; building coalition-model organizing campaigns in the states/regions; creating materials that enable LCCR's public policy grassroots leaders to alert and educate their constituencies of proposed federal policy changes; and meeting with and speaking to

national coalition organizations that work with LCCR/LCCREF on the issues affecting civil and human rights at the federal, state, and local levels.

Ms. Buchman has also authored numerous training materials and outreach plans to engage activists in LCCR/LCCREF priority issues in states across the country.

SUMI CHO

Sumi Cho is a Professor of Law at the DePaul University College of Law. She writes and teaches in the areas of Critical Race Theory, Employment Discrimination, Remedies, and Race, Racism & U.S. Law and speaks nationally on issues of affirmative action, sexual harassment, racial profiling, multiracial politics and coalitions, and remedial theories.

Professor Cho holds a Ph.D. in Ethnic Studies as well as a J.D. from the University of California at Berkeley. She has written extensively on affirmative action including articles such as *Embedded Whiteness*, Berkeley La Raza Law Journal, (forthcoming), *From Massive to Passive to Righteous Resistance: Understanding the Culture Wars from Brown to Grutter*, 7 U. Pa. J. Const. L. 809 (2005); *Understanding White Women's Ambivalence Towards Affirmative Action: Theorizing Political Accountability in Coalitions*, 71 UMKC L. Rev. 399 (2002); *Multiple Consciousness and the Diversity Dilemma*, 68 U. Colo. L. Rev. 1035 (1997); and *Beyond Self-Interest: Asian Pacific Americans Toward Community of Justice*, with Gabriel Chin, Jerry Kang, and Frank Wu, 4 UCLA As. Pac. Am. L. J. 129 (1996).

She also serves on the boards of the Asian American Institute, the largest pan-Asian advocacy organization in Chicago, the Asian American Justice Center based in Washington, D.C., and "LatCrit," a critical legal studies organization that explores Latina/Latino issues using an interdisciplinary, multicultural approach.

Speaker and Presenter Bios

ROBERT W. FAIRLIE

Dr. Fairlie is an Associate Professor of Economics and the Director of the Masters Program in Applied Economics and Finance at the University of California, Santa Cruz. He was a Visiting Fellow at Yale University and is a research affiliate of National Poverty Center at the University of Michigan and the Institute for the Study of Labor (IZA).

His research interests include ethnic and racial patterns of self-employment, entrepreneurship, access to technology and the "Digital Divide," the effects of immigration on U.S. labor markets, racial patterns in unemployment and job displacement, welfare reform, education, and health insurance. His research has been published in leading economics, public policy, and management journals.

He has received grants from the National Science Foundation, the William T. Grant Foundation, U.S. Small Business Administration, U.S. Department of Labor, Kauffman Foundation, Russell Sage Foundation, Spencer Foundation, and Public Policy Institute of California. He has testified to the U.S. Congress, U.S. Department of Treasury and the California State Assembly, Committee on Utilities and Commerce regarding the findings from his research.

Dr. Fairlie holds a Ph.D. and M.A. in Economics from Northwestern University and a B.A. with honors from Stanford University.

CHERYL I. HARRIS

Cheryl I. Harris is Professor of Law at UCLA School of Law where she teaches Constitutional Law, Civil Rights, Employment Discrimination, Critical Race Theory and Race Conscious Remedies.

A graduate of Wellesley College and Northwestern School of Law, Professor Harris began her teaching career in 1990 after a decade in practice that included criminal

appellate and trial work and municipal government representation. Her expertise in issues pertaining to civil rights is an outgrowth of her work as an advocate as well as her deep engagement with international human rights through collaborations with U.S. legal scholars and South African lawyers during the development of South Africa's constitution.

Professor Harris is the author of groundbreaking scholarship in the field of Critical Race Theory, including the influential article, "Whiteness as Property" (Harvard Law Review). She has lectured at leading institutions and fora, both in the US and in Europe, South Africa and Australia. Most recently her research has focused on re-examinations of signature cases implicating race, including *Plessy v. Ferguson* and *Somerset's Case* as part of a reevaluation of the meaning of the Fourteenth Amendment.

Additionally, her work has engaged central issues in the affirmative action debate. She has been active in leadership in numerous organizations including the American Studies Association and the ACLU and has served as a consultant to the MacArthur Foundation.

She was the recipient in 2002 of a Mellon Fellowship to coordinate an interdisciplinary semester long workshop on redress at the University of California Humanities Research Institute. In 2005 she received the American Civil Liberties Union Foundation Professor of the Year for Civil Rights Education award.

DARNELL M. HUNT

Darnell Hunt is director of the Ralph J. Bunche Center for African American Studies and Professor of Sociology at UCLA. Dr. Hunt has written extensively on race and media, including numerous scholarly journal articles and popular magazine articles. He has also published three books about these

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issues: *Screening the Los Angeles "Riots": Race, Seeing, and Resistance* (Cambridge University Press, 1997), *O.J. Simpson Facts and Fictions: News Rituals in the Construction of Reality* (Cambridge University Press, 1999), and *Channeling Blackness: Studies on Television and Race in America* (Oxford University Press, 2005). Prior to his positions at UCLA, he chaired the Department of Sociology at the University of Southern California.

Over the past decade, Dr. Hunt has worked on several projects exploring the issues of access and diversity in the Hollywood industry. He authored the last installments in the Hollywood Writers Report, released by the Writers Guild of American (WGA) in 2005 and 2007. He was principal investigator of *The African American Television Report*, released by the Screen Actors Guild (SAG) in June of 2000. He co-authored with Abel Valenzuela a 2002 report on the Spanish-language media in Los Angeles for American Federation of Television and Radio Artists (AFTRA). He has also worked in the media and as a media researcher for the U.S. Commission on Civil Rights' 1993 hearings on diversity in Hollywood.

Dr. Hunt has also been a frequent public commentator on questions of media and race. He has been interviewed for dozens of television and radio programs on the topic, and the findings of his research studies have been reported in hundreds of newspapers throughout the United States and abroad. He has also participated in and moderated several panel discussions about media diversity sponsored by entities such as the Federal Communications Commission, the United Nations, the Congressional Black Caucus, and numerous colleges and universities.

Dr. Hunt received a Bachelor's degree in Journalism from USC, an MBA from Georgetown University, and a Ph.D. in Sociology from UCLA. A native of Washington, D.C., he has lived in Los Angeles for the past 25 years.

KARUME JAMES

Karume James is an organizer with the public service union, American Federation of State, County and Municipal Employees (AFSCME), which represents over 20,000 service and patient care workers throughout the University of California system. An alumnus of UCLA, he graduated in 2006 with a B.A. in African American Studies. During his time at UCLA, he was heavily engaged in social justice issues, ranging from the closure of the King/Drew trauma center to the crisis in Black student admissions, and served in several leadership positions including Chairman of the Afrikan Student Union.

MANDLA KAYISE

Mandla Kayise is an educator, community planner and activist. Founder and CEO of New World Education (NWE), a youth and community development consulting business, Mr. Kayise has served thousands of students and residents across the Southern California area, in Northern California and on the East Coast. NWE provides direct services to youth and community stakeholders, facilitating student and community empowerment and development. NWE offers lectures, workshops, training and program development to community colleges, universities, school districts, government agencies and community-based organizations.

Throughout his professional life, Mr. Kayise has been involved in local initiatives focused on improving educational opportunities and other quality of life issues in disadvantaged communities. As an educator, Mr. Kayise was a founder of UCLA's Campus Retention Committee (CRC), a student-initiated, student-run retention center that annually serves several thousand UCLA undergraduates through peer counseling, mentorship and workshops. He has assisted in the development of Saturday Schools, after school programs and other education

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services in the Southern California area, as well as other parts of the state and on the East Coast. As a community planner, Mr. Kayise has contributed to resident-driven community planning in several communities including the Vernon/ Central, Vermont/Manchester, Hyde Park and Leimert Park communities in Los Angeles.

An active UCLA alumnus, Mr. Kayise studied Economics as an undergraduate and Regional and International Development at UCLA's School of Public Policy. He is the immediate past President and current University Relations Chair of the UCLA Black Alumni Association and a member of the UCLA Alumni Association. Active in local community organizations, he is Co-Chair of the Alliance for Equal Opportunity in Education, Vice-President of the Leimert Park Merchants' Association and a member of the Hyde Park Organizational Partnership for Empowerment (HOPE).

DAVID KEEN

David Keen is a Managing Director of BBC Research & Consulting. BBC is a 25-person economic consulting firm founded in Denver in 1970.

Mr. Keen directed one of the nation's first disparity studies after the U.S. Supreme Court's *Croson* decision in 1989. He has since directed more than 40 disparity studies, including three state studies in response to the Ninth Circuit's decision in *Western States Paving v. Washington State DOT*. His report for the California Department of Transportation (Caltrans) was completed in summer 2007. Mr. Keen has testified as an expert witness in federal court for cities defending minority business programs. He also performs economic development, small business program and workforce development research, often with clients in California. He has served as an adjunct faculty member of the University of Denver. Prior to joining BBC in 1982, Mr. Keen was a researcher for the World Bank examining disparities in economic development in Brazil.

Mr. Keen has an undergraduate degree from the University of Arizona and a Masters in City and Regional Planning from Harvard University.

BOB LAIRD

Bob Laird worked in admissions and outreach at UC Berkeley for 22 years, serving as Director of Undergraduate Admission from 1993 until his retirement in 1999. He has been a frequent presenter at the National Forum of the College Board and at the national conference of the National Association for College Admission Counseling, and he served on the Guidance and Admission Assembly Council of the College Board from 1997-2000. Since his retirement from Berkeley, he has consulted on higher education admissions policy and written extensively on admissions and equity issues. His work has appeared in *The Chronicle of Higher Education* and *National CrossTalk*, among other places, and he is the author of *The Case for Affirmative Action in University Admissions* (Bay Tree Publishing). He lives in Berkeley with his wife Karen Rice.

TIM LOHRENTZ

As a Program Manager at the Insight Center for Community Economic Development (formerly the National Economic Development and Law Center), Tim Lohrentz provides technical assistance and research on a variety of projects related to community and economic development in immigrant communities and communities of color, specifically related to small business development, worker cooperatives, family economic self-sufficiency, and sector workforce development.

Some of Mr. Lohrentz's recent publications include *A Minority Business Development Framework for the Cleveland Foundation*; *Entrepreneurial Opportunities for Women in the Handmade Craft Industry*; *Structural Considerations in Cooperative Franchising*; and *Employment Survey of Vineyard and*

Nursery Workers in Oregon's Willamette Valley. Mr. Lohrentz is currently working on a comprehensive scan of state policies related to affirmative action in public procurement programs. This work, funded by the Ford Foundation, will be used to determine the impact of the initiation, revision, or elimination of affirmative action in public procurement programs at the state-level.

Mr. Lohrentz earned his B.A. in Mathematics from Bethel College (KS) and a Masters in Urban Planning and Policy from the University of Illinois at Chicago.

REYNALDO F. MACÍAS

Reynaldo Macías is the acting dean of the Division of Social Sciences, the largest academic division in the College. Dr. Macías is also a faculty member in and Chair of the UCLA Department of Chicana and Chicano Studies and the César E. Chávez Center for Interdisciplinary Instruction. He has joint faculty appointments in the departments of Education and Applied Linguistics.

His previous academic appointment was in the UC Santa Barbara Dept. of Education, during which time he was also the Director of the University of California's Linguistic Minority Research Institute between July 1992 and December 1997. He is the author, co-author, and editor of 6 books and over three dozen research articles and chapters on such topics as bilingual education, teacher supply and demand, Chicanos and schooling, adult literacy, language choice, analyses of national language survey data, population projections, language policies, and media research. His work has appeared in such journals as the NABE Journal, the International Journal of the Sociology of Language, and the Annual Review of Applied Linguistics. His current research activities are in language policy/politics/demography, adult literacy and teacher studies.

Dr. Macías is a regular consultant to state policy making bodies. He served on the

California Commission for Teacher Credentialing advisory committees on specifying professional development opportunities for CLAD preparation (SB 1969), and on Teacher Credentialing for the 21st Century (SB 1422). He is co-founder of Aztlán—International Journal of Chicano Studies Research, and of the National Association of Chicano Social Science. He has been a member of the Board of Directors of the California Association for Bilingual Education (1983-1985), the National Association for Bilingual Education (he served as Treasurer for the (1986-1987 term), and was the Editor of the National Association for Bilingual Education Journal, from 1985 to 1989. Dr. Macías also served on the Board of Directors for the Mexican American Legal Defense and Education Fund (MALDEF) between 1988 and 1992, where he helped fashion their language rights program.

From 1979 to 1981, Dr. Macías served as the Assistant Director for Reading and Language Studies at the National Institute of Education in the United States Education Department. He has also received several awards, including Postdoctoral fellowships from the UCLA Institute for American Cultures, the National Research Council, and the Center for Puerto Rican Studies (Hunter College, NY). He was an affiliated Scholar of the Tomás Rivera Policy Center from 1986 until 1995, where he carried out work on language and literacy policies, as well as bilingual and Chicano teacher supply and demand, preparation and staff development. In 1994, he was honored by the National Association for Bilingual Education as a Pioneer in the field, and again in 1995 for contributions to the organization. In 1996, he was appointed by the President of the United States, William Jefferson Clinton, to the Advisory Board for the National Institute for Literacy.

Dr. Macías received his doctoral degree from Georgetown University in Linguistics, specializing in Sociolinguistics and minoring in Theoretical Linguistics and Language

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Policy and Planning. He received his bachelor's degree in Sociology and a Master of Arts in Education (Early Childhood Curriculum and Instruction) from UCLA.

JUSTIN MARION

Justin Marion is an Assistant Professor in the Economics Department of the University of California, Santa Cruz, where his fields of specialization are public finance and applied microeconomics. Prior to his employment at UCSC, he received a Ph.D. from the Graduate School of Business at the University of Chicago in 2005.

Dr. Marion has written several papers on affirmative action in public procurement, examining the effects of affirmative action on contracting opportunities and business ownership, and its cost to the government. His work on affirmative action has been cited in popular press sources such as the San Francisco Chronicle and the Detroit Free Press. Dr. Marion has also written papers on the effects of monitoring intensity and tax rates on tax evasion, the impacts of low income housing developments on neighborhoods, and the relationship between university class attendance and student performance. His research has received funding from the UC Labor and Employment Fund, the UC Transportation Center, and the Kauffman Foundation.

ARACELI MARTÍNEZ-OLGUÍN

Araceli Martínez-Olguín serves as the ACLU Women's Rights Project Fellow. Ms. Martínez-Olguín received her J.D. from University of California, Berkeley School of Law (Boalt Hall) in 2004, where she served as an articles editor for the La Raza Law Journal. She joined the ACLU after a two-year clerkship with United States District Court Judge David Briones in El Paso, Texas.

Since joining the Women's Rights Project, Ms. Martínez-Olguín has been part of the legal team representing a group of intervenors defending the legality of a race- and gender-

conscious remedy implemented by the New York City Department of Education. Prior to law school, she taught bilingual kindergarten through Teach for America in Oakland, California. Ms. Martínez-Olguín, a Mexican immigrant, was raised in Sacramento, California, and is a 1999 graduate of the Woodrow Wilson School of Public and International Affairs at Princeton University.

RUTH MILKMAN

Ruth Milkman is Professor of Sociology and Director of the Institute for Research on Labor and Employment at UCLA. She did her undergraduate work at Brown University and received her M.A. and Ph.D. from the University of California, Berkeley.

Her research and writing ranges over a variety of issues surrounding work and labor organization in the U.S. She has written many articles and four books: *Gender at Work: The Dynamics of Job Segregation during World War II* (1987); *Japan's California Factories: Labor Relations and Economic Globalization* (1991); *Farewell to the Factory: Auto Workers in the Late 20th Century* (1997), and most recently, *L.A. Story: Immigrant Workers and the Future of the U.S. Labor Movement* (2006). She is currently working on two projects, one on labor law violations affecting low-wage workers and the other on California's paid family leave program.

MONIQUE W. MORRIS

Monique W. Morris has nearly 20 years of professional and volunteer experience as an advocate in the areas of education, civil rights, juvenile justice, and social justice. Ms. Morris is the author of *Too Beautiful for Words* and several other publications and articles on social justice issues.

Ms. Morris has made presentations to the Congressional Black Caucus, American Society of Criminology, California Association of Equal Rights Professionals,

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National Association for the Advancement of Colored People, and other organizations of note. Her research and expertise have been captured by over 200 print, radio, and televised media, establishing her as a leading voice on social justice scholarship and advocacy.

Ms. Morris is a leader in community response strategies designed to reduce the disproportionate representation of youth of color in the juvenile justice system. As a Senior Research Associate and Consultant with the National Council on Crime and Delinquency, Ms. Morris worked with communities throughout the nation to develop comprehensive approaches to eliminating ethnic and gender disparities in the justice system.

Ms. Morris continues to consult with criminal justice agencies, including the Contra Costa County Probation Department and the Corrections Standards Authority, and community stakeholders to facilitate research-based alternatives to incarceration.

In March 2007, Ms. Morris joined the Thelton E. Henderson Center for Social Justice at the University of California, Berkeley School of Law (Boalt Hall) as the Senior Research Fellow.

Prior to joining the Henderson Center for Social Justice, Ms. Morris was Director of the Discrimination Research Center (DRC), a nonprofit think-tank that measured the prevalence of discrimination in access to employment and public services. At the Henderson Center, Ms. Morris leads research on racial justice, poverty, juvenile justice, affirmative action and disparities in employment and public contracting.

Her most recent publication, "Affirmative Action at the Crossroads: Colorblind Racism and the Decline of African Americans in Public Contracting" was published in the latest issue of *Souls: A Journal of Black Politics, Culture, and Society*.

CAMILA MORSCH

Camila Morsch is the Associate Director for the African American Policy Forum. Originally from Brazil, Ms. Morsch graduated from law school in 2004 with an excellent academic record. She holds a Masters degree in Political Science from Marshall University (2006) and an L.L.M. in International Law and Comparative Studies from the UCLA School of Law (2007).

Ms. Morsch started her career as an intern coordinator at the State Public Ministry in Brazil, where she worked for 2 years. After accepting a Graduate Assistantship from Marshall University in West Virginia she has held several research appointments, working mainly on issues related to transnational public policy, international human rights, non-profits, and grant administration. In 2003, she wrote her law school manuscript on Social Responsibility of the Judiciary in Brazilian Bankruptcy Cases, for which she received the Outstanding Monograph award issued by the Brazilian Padre Reus Press. This work was recently published as part of the Outstanding Monograph Series. In 2006, she wrote her thesis on the "Likely to Become a Public Charge Clause" and the American Visa Issuance Process. This thesis is currently under revision for publication in Europe.

More recently, Ms. Morsch has concentrated on organizing the international series of the African American Policy Forum as well as on social justice research methods. Her main research interest is in theories of international law, more specifically the role of knowledge and academic research in the making of the international human rights regime.

PAUL ONG

Paul Ong is a Professor at UCLA's School of Public Policy and Asian American Studies. His research focuses on the

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socioeconomic status of immigrants and minority populations. He is currently engaged in several projects, including studies on Asian American civic engagement, environmental justice, health care access, asset building, and the role of the urban spatial structure on inequality.

Previous research projects have included studies of the impact of defense cuts on California's once-dominant aerospace industry, the impact of immigration on the employment status of young African Americans, minority community economic development, and the influence of car ownership and subsidized housing on welfare usage. He has edited numerous policy books on Asian Americans.

Dr. Ong is the outgoing editor of AAPI Nexus and is the director of the newly established U.C. AAPI Policy Multi-Campus Research Program. He has served as an advisor to the U.S. Bureau of the Census, and to the California Department of Social Services and the State Department of Employment Development, as well as the Wellness Foundation and the South Coast Air Quality Management District.

Professor Ong received his Ph.D. from U.C. Berkeley in Economics.

DAVID BENJAMIN OPPENHEIMER

David Benjamin Oppenheimer is Professor of Law and Associate Dean for Faculty Development at Golden Gate University School of Law, in San Francisco. Professor Oppenheimer has presented scholarly papers on discrimination law at numerous universities, including Yale, Stanford, Columbia, Berkeley, Duke, Oxford, Heidelberg and the University of Paris, and has published articles on discrimination law in the *Pennsylvania Law Review*, the *Cornell Law Review*, the *Columbia Journal of Human Rights Law*, the *Berkeley Women's Law Journal*, the *Berkeley Journal of Employment and Labor Law*, *Droit et Cultures*, and many others. He is a co-author of the award-

winning *Whitewashing Race: The Myth of a Color-Blind Society* (2003). In addition to his position at Golden Gate, he is an affiliated scholar with the Institute for the Study of Social Change at the University of California, Berkeley.

VINCENT PAN

Vincent Pan, Executive Director of Chinese for Affirmative Action (CAA), is a leading progressive voice on issues of racial justice and social change. Founded in 1969 and based in San Francisco, CAA has advocated on a range of pressing social justice issues including language access, immigrant rights, affirmative action, educational equity, and marriage equality. CAA also anchors Asian Americans for Civil Rights and Equality (AACRE), a statewide legislative and budget advocacy project conducted in partnership with the Asian Pacific American Legal Center of Southern California and the Asian Law Caucus.

Prior to joining CAA, Mr. Pan worked with the William J. Clinton Foundation in Beijing to start and expand HIV/AIDS treatment and care programs in China. Before that, he co-founded and served as Executive Director of Heads Up, a community-based organization that runs education and enrichment programs for low-income children in Washington, D.C. Mr. Pan holds a Bachelor's degree in Economics from Harvard College, and has been a Fellow with the Center for Social Innovation at Stanford University, the Echoing Green Foundation, and the Stride Rite Foundation.

EVA JEFFERSON PATERSON

Eva Jefferson Paterson is the President and a founder of the Equal Justice Society, a national organization dedicated to changing the law through progressive legal theory, public policy and practice.

Prior to taking the helm of the Equal Justice Society in 2003, Ms. Paterson worked at the

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Lawyers' Committee for Civil Rights for twenty-six years, thirteen of them as Executive Director. Ms. Paterson led the organization's work providing free legal services to low-income individuals, litigating class action civil rights cases, and advocating for social justice.

At the Lawyers' Committee, she was part of a broad coalition that filed the groundbreaking anti-discrimination suit against race and gender discrimination by the San Francisco Fire Department. That lawsuit successfully desegregated the department, winning new opportunities for women and minority firefighters.

Ms. Paterson co-founded and chaired the California Coalition for Civil Rights for 18 years, and was a leading spokesperson in the campaigns against Proposition 187 and Proposition 209 and numerous other statewide campaigns against the death penalty, juvenile incarceration and discrimination against lesbians and gay men.

Following her graduation from U.C. Berkeley's Boalt Hall School of Law, she worked for the Legal Aid Society of Alameda County and co-founded A Safe Place, a shelter for battered women in Oakland, California. She served as Vice President of the ACLU National Board for eight years, and chaired the boards of Equal Rights Advocates and the San Francisco Bar Association.

Ms. Paterson has received more than 50 awards, including the Fay Stender Award from the California Women Lawyers, Woman of the Year from the Black Leadership Forum, the Earl Warren Civil Liberties Award from the ACLU of Northern California, and the Alumni Award of Merit from Northwestern University where she received her B.A. in political science and served as the first African-American president of student government.

MARIE-CHRISTINE PAUWELS

Marie-Christine Pauwels is an Associate Professor in the Department of Foreign

Languages at the University of Paris, France, where she lectures in American Studies. Prior to this she spent one year as a teaching assistant at UC Berkeley at the beginning of her career, followed by a doctoral dissertation on Saul Bellow.

To date, she has written several books on American culture and society including *The Civilization of the United States* (2006) and *The American Dream* (1997), as well as many articles on ethnic minorities in the school system, consumer culture, and American corporations. Her research now focuses on the current evolution of affirmative action in the United States and in France, whether preferential treatment still works for African-Americans, and the new business hype around the issue of diversity management.

Dr. Pauwels travels regularly to the United States for conferences and research including the *National Association of Ethnic Studies* conference in San Francisco in April 2006. In 2002 she held a Fulbright Fellowship at NYU.

BRADLEY S. PHILLIPS

Brad Phillips is a litigation partner in the Los Angeles office of Munger, Tolles & Olson LLP.

Mr. Phillips received his Bachelor of Arts degree in history from Stanford University in 1975. He graduated with distinction and departmental honors and was elected to Phi Beta Kappa. Mr. Phillips received his J.D. degree from Yale Law School in 1978, and served as an Editor of the Yale Law Journal.

Mr. Phillips served as a law clerk to the Honorable Wm. Matthew Byrne, Jr. of the United States District Court for the Central District of California during the 1978-79 term. He joined Munger, Tolles & Olson in 1979, and became a partner in the firm in January 1984.

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Mr. Phillips' practice consists principally of complex civil litigation in the trial and appellate courts. He has been lead counsel in jury trials in both state and federal court, and he has argued on numerous occasions before the California Supreme Court, the Ninth Circuit Court of Appeals, the D.C. Circuit Court of Appeals, and the California Courts of Appeal. Mr. Phillips' principal areas of practice include antitrust, unfair competition, First Amendment, intellectual property, and general commercial litigation. Mr. Phillips has also done extensive litigation involving constitutional issues, civil rights, election law and other public law issues.

Mr. Phillips devotes a substantial portion of his time to representing clients on a pro bono basis. He has represented classes of homeless individuals, undocumented immigrants, prisoners, and voters, as well as numerous non-profit organizations. Among other successes, Mr. Phillips obtained reversals of the convictions of two individuals who had been sentenced to death in California.

Mr. Phillips has served as a member of the Board of Trustees of the Los Angeles County Bar Association and as chair of several of that Association's committees. He is currently a member of the Board of Directors of the California Bar Foundation. Mr. Phillips is a past-President of the Legal Aid Foundation of Los Angeles. He is currently a member of the Executive Committee of the Board of Directors and the Regional Vice-Chair of the Lawyers' Committee on Civil Rights Under Law. Mr. Phillips was the 1996 recipient of the Legal Services Award of the Mexican American Legal Defense and Education Fund (MALDEF), the 1999 recipient of the Pro Bono Civil Rights Advocates Award of the ACLU Foundation of Southern California, and the 2002 recipient of the ACLU's Voting Rights Award.

Mr. Phillips has done extensive legal and policy work in the areas of ethics in government, campaign finance, and election law. He served from 1993-96 as the Chair of

California Common Cause and from 1993-1999 and 2002-present as a member of the National Governing Board of Common Cause. Mr. Phillips represented the proponents of the two comprehensive campaign reform initiatives passed by California voters, and he was co-counsel for the Congressional sponsors of the Bipartisan Campaign Reform Act of 2002.

BERNIDA M. REAGAN

Bernida Reagan is the founding Director of the Port of Oakland's Division of Social Responsibility. She is responsible for directing the Port's programs which are designed to increase local participation in employment and business opportunities and environmental programming related to the Port's activities.

The Social Responsibility Division includes the Employment Resources Development Program, Contract Compliance and Environmental Programs and Safety.

Before being appointed to her current position at the Port, Ms. Reagan served as the founding Director of the East Bay Community Law Center (EBCLC). EBCLC is a non-profit legal service office affiliated with Boalt Hall School of Law at U.C. Berkeley. EBCLC provides free legal services to low-income clients in the areas of housing, public benefits, HIV-related law and economic development.

Ms. Reagan serves on the boards of the Bay Area Black United Fund, YMCA of the East Bay, and the Oakland Private Industry Council, and the Advisory Boards of the Thelton E. Henderson Center for Social Justice at Boalt Hall School of Law (U.C. Berkeley), the East Bay Small Business Development Center and Women's Initiative for Self-Employment. She is a member of the Organizing Committee of the Oakland Economic Development Corporation.

She is passionately committed to equal opportunity and diversity and lectures

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frequently on social justice, human rights and economic development.

SOPHIE ROBIN-OLIVIER

Sophie Robin-Olivier is Professor of Law, Co-director of the Center for European and Comparative Law Studies (CEJEC) and Director of the Master Program on “The Laws of Europe” at the University of Paris X (France). She holds an MBA from Hautes Etudes Commerciales, a Diploma of Advanced Studies in Social & Economic Law from the University of Paris-Dauphine, a PhD from the University of Aix-Marseille, and the “Agregation de droit privé” (French highest distinction in Law). She has taught at several law schools in France and the United States and, since 2005, has co-taught a Comparative Equality course with Prof. David Oppenheimer.

Professor Robin-Olivier is the author of *The Principle of Equality in European Community Law, An Analysis Through the Prism of Economic Freedoms (Le principe d'égalité en droit communautaire, étude à partir des libertés économiques*, PUAM, 1999), and is currently finishing *Introduction to European Law* together with Prof. J.S. Bergé, to be published in 2008 by the French University Press (PUF). She has written many articles on European and Comparative law, the most recent ones being “Judicial Europeanization of British Law: An Analysis of the House of Lords’ Decision in the Belmarsh Case,” “Modernizing Labour Law to Meet the Challenges of the XXIst Century, a Green Paper presented by the European Commission,” “The International Mobility of Workers” and “Federalism and the Dialogue on Equality, A Comparison of US and EU Laws” (together with Prof. Charles Baron). She recently organized a symposium on “Racial Discrimination and Diversity: A Rising Concern for Social Law” (Paris, June 2007).

THOMAS A. SAENZ

In August 2005, Thomas A. Saenz became Counsel to the Mayor of the City of Los

Angeles, where he serves as a member of Mayor Antonio Villaraigosa’s executive team and provides legal and policy advice to the mayor. Previously, Mr. Saenz practiced civil rights litigation at the Mexican American Legal Defense and Educational Fund (MALDEF), a national organization dedicated to securing and promoting the civil rights of Latinos in the United States, where he served as Vice President of Litigation. As Vice President, Mr. Saenz oversaw MALDEF’s efforts nationwide to pursue civil rights litigation in the areas of education, employment, political access, immigrants’ rights, and public resource equity.

Mr. Saenz was born and raised in southern California. He graduated summa cum laude from Yale University, and he received his law degree from Yale Law School. He then served as a law clerk to the Honorable Harry L. Hupp of the U.S. District Court for the Central District of California, and to the Honorable Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit.

Mr. Saenz joined MALDEF as a staff attorney in 1993; he became Los Angeles Regional Counsel in 1996, National Senior Counsel in 2000, and Vice President of Litigation in 2001. At MALDEF, he served as lead counsel in numerous civil rights cases, involving such issues as educational equity, employment discrimination, immigrants’ rights, day laborer rights, and voting rights. For example, he served as MALDEF’s lead counsel in successfully challenging California’s Proposition 187 in court; as such, he presented extensive written and oral arguments on numerous occasions in three different cases involving the anti-immigrant initiative. He was also MALDEF’s lead counsel in two court challenges to Proposition 227, the English-only education initiative that voters enacted in 1998, and he successfully challenged several ordinances barring day laborers from soliciting employment. Mr. Saenz also served as MALDEF’s lead counsel in

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challenging California's congressional redistricting in 2001.

For eight years, Mr. Saenz taught "Civil Rights Litigation" in the spring semester as an adjunct lecturer at the U.S.C. Law School. He currently serves on the Los Angeles County Board of Education, and he previously served on the Los Angeles County Commission on Human Relations.

MICHAEL SUMNER

Michael Sumner is a Research Fellow at the Thelton E. Henderson Center for Social Justice at the University of California, Berkeley School of Law (Boalt Hall). He has over 10 years experience studying sex and race utilizing a multidisciplinary, social science approach, with a recent focus on the impact of Proposition 209 in California's transportation construction industry. He has co-authored several peer-reviewed articles and other reports and has presented his research findings at scientific meetings, governmental hearings, and to the general public.

Dr. Sumner received his BA from Rutgers College in 1997 with Honors in Psychology and received his PhD in Social and Personality Psychology from New York University in 2003. Before joining the Henderson Center, he completed a post-doctoral fellowship at the Preventive Medicine Research Institute and was the Research Manager at the Discrimination Research Center. He has been inducted into Phi Beta Kappa and received the Dean's Outstanding Student Teaching Award at NYU.

PAULE CRUZ TAKASH

Dr. Paule Cruz Takash holds a Ph.D. in Sociocultural Anthropology from the University of California, Berkeley (1990). Currently a research associate at the UCLA North American Integration and Development (NAID) Center, she also teaches in the UCLA César E. Chavez Department of Chicana and Chicano Studies where she developed the

course, "The History and Politics of Affirmative Action" among other courses examining the historical and contemporary racialization of the U.S.

As Past President of the Association of Latina and Latino Anthropologists (ALLA), Dr. Takash has organized scholarly sessions and special events about the impacts of Proposition 209 at Annual Meetings of the American Anthropological Association (AAA) and this year serves as Chair of the AAA Presidential Session, "Affirmative Action Around the World."

Dr. Takash is a sitting Los Angeles City Commissioner appointed in 2006 by Los Angeles Mayor Antonio Villaraigosa to the LA City Human Relations Commission. Other board appointments include the William C. Velásquez Institute, a non-partisan organization that conducts research on Latina/o political participation, and Casa Libre/Freedom House, a Los Angeles nonprofit organization that houses and otherwise supports homeless immigrant youths, 12-18 years of age.

JOHN WILLIAM TEMPLETON

John William Templeton is the President and Executive Editor of eAccess Corp., a San Francisco multimedia publisher. He authored the four-volume *Our Roots Run Deep: the Black Experience in California, Vols. 1-4* and a chapter in the Oxford Encyclopedia of African-American History. He has also edited the San Jose Business Journal, Richmond (VA) Business Journal, Richmond AFRO-AMERICAN and Winston-Salem Chronicle. Mr. Templeton holds a B.A. cum laude from Howard University with additional graduate study at UNC-Chapel Hill.

CHRISTOPHER WESTHOFF

Mr. Westhoff is an Assistant City Attorney for the City of Los Angeles, and serves as General Counsel for the City's Department of Public Works. He graduated from UCLA

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in 1971 with a Bachelor of Arts degree in Political Science. In 1974, he graduated from Southwestern University School of Law with a Juris Doctor degree.

After passing the California Bar Exam, he immediately began working for the Los Angeles City Attorney's Office. Except for a three year break in City service from 1982 to 1985, Mr. Westhoff has been the only Attorney assigned as General Counsel to the Department of Public Works since 1980. Mr. Westhoff advises the Board of Public Works and its six bureaus on all aspects of municipal, administrative, regulatory, environmental and construction law with an emphasis on public contracting and bidding. He has overseen more than 10 billion dollars of Public Works contract awards. He also represents the department in contract negotiations and before regulatory bodies

such as the Air Quality Management District, the State Integrated Waste Management Board, the Regional Water Quality Control Board and the United States Environmental Protection Agency. Mr. Westhoff also handles specialty litigation involving all aspects of wastewater collection and treatment as well as challenges to the authority of the Board of Public Works on public contracting matters. He successfully defended the City's Minority Business Enterprise, Women Business Enterprise and Other Business Enterprise Subcontractor Outreach Program before the California Supreme Court in 1994. (*Domar Electric, Inc. v. City of Los Angeles* [1994] 9 Cal.4th 161).

In addition, he serves as a Board Member and President of the National Association of Clean Water Agencies ("NACWA").

PANEL 1: ACCESS TO CONTRACTS: THE STATE OF MBES AND WBES POST- 209

Affirmative Action Programs and Business Ownership among Minorities and Women

Robert Fairlie and Justin Marion

University of California, Santa Cruz

Affirmative action programs are widely used in federal public procurement markets and by some state and local governments, and contracts awarded through these programs are a significant source of revenue for some firms owned by minorities and women. Recent ballot initiatives in California and Washington, however, have significantly curtailed the use of affirmative action in these states, and similar initiatives are under consideration in other states as well.

The authors estimate the impact of eliminating affirmative action on minority business ownership from the voter initiatives in California and Washington. The elimination of affirmative action in these states is used as a natural experiment. In particular, the authors examine the rate of minority business ownership before and after the elimination of the programs in California and Washington. To control for time-varying factors, they compare changes over time in minority business ownership in these two states to other states that did not experience changes in affirmative action programs.

They also make comparisons to rates of business ownership among white men as another method of controlling for time-varying factors. Their findings indicate that eliminating affirmative action may in fact lead to more self-employment among minorities and women, supporting the idea that minorities and women may turn to self-employment in response to reduced employment opportunities. For most race/gender groups, the authors find a statistically significant increase in the self-employment rates of minorities and women in both California and Washington after the elimination of state affirmative action.

There are a couple of notable exceptions to this. The average self-employment rate of African-American men is lower in California post-Proposition 209. However, their findings indicate that this is primarily related to a pre-existing downward trend in self-employment among blacks in California. Relative to the trend that existed before Proposition 209 in California, the rate of black self-employment after Proposition 209 increased as well. In Washington, eliminating affirmative action is associated with an increase in the self-employment rate among Latino men and women, black women, and white women. Only men of other races experienced a statistically significant decline post-affirmative action.

Impact of Proposition 209 on Business Growth Rates: Comparison to Washington, Oregon, Florida, and Maryland

Tim Lohrentz

Insight Center for Community Economic Development (formerly National Economic Development and Law Center)

This paper looks at the effects of Proposition 209 on minority-owned (MBE) and women-owned (WBE) business growth rates. Specifically, this paper found that business growth rates for MBEs and WBEs in California from 1996 to 2001 trailed those in Oregon and Maryland, two states where affirmative procurement policies were not eliminated or suspended.

The researcher used a random sample of 2,720 firms created from Dun & Bradstreet business data. MBEs and WBEs in Washington, which passed Initiative 200 in 1998, and Florida, which suspended its affirmative action in 1999, also trailed those in Oregon and Maryland. Business growth rates for white-male-owned firms did not vary from one state to the next. Of the five states that were examined, Maryland has had the strongest and most consistent affirmative procurement policies. Long-term MBEs and WBEs in Maryland – those

established prior to 1993 – were larger, on average, than MBEs and WBEs in the other four states.

The Port of Oakland's Diversity Programs: Successes and Challenges Post-209

Bernida Reagan

Director of Social Responsibility, Port of Oakland

Proposition 209 has had a profound impact on the world of public contracting. The Port of Oakland, officially a department of the City of Oakland, operates the fourth largest container port in the country (after Los Angeles, Long Beach and NY/NJ), Oakland International Airport and manages 19 miles of waterfront in the San Francisco Bay. These three lines of business represent \$300 million in contracting opportunities for construction contractors, professional services consultants and vendors of goods and services.

Prior to Proposition 209, the Port had a robust MWBE program, as well as a federally mandated Disadvantaged Business Enterprise (DBE) program, required by the Federal Aviation Administration in order for the Port to receive Airport Improvement Program funds in the range of \$15-20 million annually. In 1998, in response to Proposition 209, the Port adopted a Non-Discrimination, Small, Local Business Utilization Program (NDSLBU) to govern public works and professional services. That program emphasized outreach, certification of small and local firms and technical support such as bonding and finance services to ensure access for businesses to Port economic opportunities, without violating Proposition 209.

Bernida Reagan, Director of Social Responsibility for the Port, will describe the successes of the Port's programs as well as the challenges facing the Port in light of Proposition 209, the *Western States Paving* case and other actions limiting the Port's ability to fully utilize and implement tools to achieve equity and full opportunity in public contracting.

LUNCHTIME PRESENTATION

Compelling State Interest: California: A Contra-History Without Prop. 209

John William Templeton

President and Executive Editor of eAccess Corp.

This work examines multiple data fields across all 58 counties of California over a 20-year period, as well as a comparative analysis of Florida and Washington, to contrast the trajectory of demographic trends for African-Americans in California that existed before the passage of Proposition 209 with the actual trends which occurred afterwards. Using the compelling state interest theory, the presentation examines whether the costs to the state from this particular policy justify a reevaluation of the initiative. For instance, if an increase in black male college graduation rates is correlated with a decline in murder rates, then does the state have the right to take measures that demonstrably reduce health care costs and increase public safety? Mr. Templeton's piece considers similar policies which were reexamined and reversed in California. It also provides a comparative historical perspective by examining the history of California as a jurisdiction where "race-neutral" policies were practiced under Mexican rule.

PANEL 3: THE OPPORTUNITY GAP: EXAMINING THE IMPACT OF 209 ON SPECIFIC COMMUNITIES

The Effectiveness of Affirmative Action in Highway Procurement

Justin Marion

University of California, Santa Cruz

Affirmative action programs designed to increase the utilization of firms owned by minorities and women in public procurement are prevalent. In this paper Dr. Marion studies the effectiveness of such programs at increasing purchases from disadvantaged business enterprises (DBEs) and fostering

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minority-owned firms in the road construction industry, a large public procurement market that makes extensive use of affirmative action. He first examines variation in states' goals for the utilization of disadvantaged business enterprises (DBEs) over time. He finds that affirmative action significantly increases contract awards to firms owned by minorities, yet has little effect on the utilization of women-owned businesses.

Affirmative action also varies across projects within a state. Using data from California state highway procurement, and an instrumental variables approach to obtain exogenous variation in a project's DBE goal, Dr. Marion finds that raising the affirmative action goal on a particular project by 10 percentage points increases the fraction of the contract subcontracted from DBEs by 5.4 percentage points.

Finally, he documents that highway construction firms in California, particularly those owned by Blacks and Asians, exhibit considerable racial segregation, and he exploits this fact to examine the effect of affirmative action on the success of minority-owned firms. Following the significant curtailment of affirmative action in California due to a direct statewide ballot initiative, the number of highway construction establishments located in predominantly Black and Asian neighborhoods fell relative to the rest of the state, even conditional on the number of non-construction establishments. This suggests that affirmative action policies may play a role in the net survival rates of minority-owned firms.

Free to Compete? and A Vision Fulfilled?

*Monique Morris and Michael Sumner
Thelton Henderson Center for Social Justice*

Findings from two studies, *Free to Compete?* and *A Vision Fulfilled?*, will be presented. These studies focus on the impact of the anti-affirmative action Proposition 209 for small businesses owned by people of color and women in California's transportation construction industry. Several methodologies were used, including Federal Highway

Administration (FHWA) awards distributed by Caltrans, the survival rate of 1996 certified Disadvantaged Business Enterprises (DBEs), and surveys, focus groups, and interviews with surviving businesses. Analyses illustrated the largely negative effects that took place after the passage of Proposition 209, including reductions in awards to DBEs, a modest survival rate for certified DBEs, a decreased effectiveness of the DBE program, and an industry culture that continues to hinder equal opportunity. Evidence-based recommendations are provided.

Challenges of Including Asian Americans in Disparity Studies

*Paul Ong
University of California, Los Angeles*

This presentation will examine the challenges of including Asian Americans in disparity studies that must be conducted before race-conscious minority contracting can be adopted. Professor Ong's talk will discuss the evolution of disparity studies, data requirements, and the analytical difficulties. This work has been partially supported by the Asian American Justice Center.

PANEL 4: COMBATING 209 IN THE COURTS: INNOVATIVE LEGAL STRATEGIES TO CHALLENGE PROP. 209

Embedded Whiteness and Public Contracting

*Sumi Cho
DePaul University College of Law*

Although courts since *Croson* have taken judicial notice of third party discrimination to affirm the use of race in public contracting as a compelling governmental interest (i.e., "passive participant theory"), this acknowledgement of the existence of private discrimination does not go far enough to modify the strict scrutiny standard of review because courts lose sight of the systemic nature of discrimination inherent to

industries operating under structural embeddedness. As such, onerous burdens and negative presumptions attach to make defending such affirmative action plans highly unpredictable and costly, despite the increasing cottage industry of “disparity studies” experts.

Through application of the strict scrutiny standard to analyze minority- and women’s business enterprise (MBEs/WBEs) programs, courts fundamentally misunderstand and misidentify the salience of identity to the construction industry. The construction industry is one such industry where tight insider networks prevail, information about subcontractors and suppliers is highly sensitive and valued, and reputational information is critical to success in the industry. In this paper, Professor Cho argues that the construction industry not only embeds tightly structured network ties that often prevail over price, but that this structure also embeds whiteness (and maleness, as well as other forms of identity).

Professor Cho’s paper aims to link critical race theory to economic sociologists’ understanding of structural embeddedness, and apply an “embedded whiteness” analysis to the law of affirmative action in the construction industry. As prescription, she argues that once it is established that industries are operating within a structure of embedded whiteness, courts should apply a different standard of review for affirmative action in such cases that would be more analogous to the “mixed motive” proof structure in employment discrimination.

Using Race or Ethnicity as Factors in Employee and Contractor Outreach

David Benjamin Oppenheimer
Golden Gate University School of Law

This essay addresses whether Prop 209’s prohibition of “discrimination” and “preferential treatment” bars the California state and local government from using race or ethnicity as factors in its outreach programs designed to recruit employees and contractors. Professor

Oppenheimer reviews the disputes over the meaning of the initiative during the Prop 209 campaign, and by the California courts both before and after it was adopted by the voters. Relying on the uncertainty regarding the meaning of the terms, and on Justice Brown’s reliance on the Griggs test for discrimination, he concludes that a ban on preferential treatment based on race and ethnicity does not prohibit all considerations of race and ethnicity in outreach programs. Professor Oppenheimer then discusses an important justification for using race and ethnicity in recruiting – as an affirmative anti-discrimination program. He concludes that government entities may use race and ethnicity in outreach programs to reach minority applicants for jobs and contracts who otherwise might not apply, as long as the program is broadly designed to also reach other potential applicants, regardless of their race or ethnicity.

PANEL 5: GLOBAL RESPONSES TO AFFIRMATIVE ACTION: THE STATE OF EQUAL OPPORTUNITY IN BRAZIL, FRANCE, AND THE EUROPEAN UNION

From Affirmative Action to Diversity Management in Corporate America

Marie-Christine Pauwels
University of Paris

At a time when affirmative action in the United States faces an uncertain future, diversity management in corporate America has emerged as the new human resources buzzword, touted by many businesses as a practical response to the issue of discrimination in the workplace. With women and ethnic minorities representing two-thirds of new labor force entrants today, taking proactive measures to integrate this increasingly diverse workforce should no longer be seen as a moral obligation, but as an economic opportunity.

That the corporate world upholds minority integration is nothing new. Ever since the Civil Rights decade, most large American businesses have been showing active

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support to integration programs, mostly to buy social peace and avoid litigation. Likewise, most businesses were hostile to Proposition 209 in 1997, and over a hundred large corporations signed amicus briefs supporting affirmative action at the University of Michigan when the Supreme Court decided on the fate of these programs in higher education in 2003 (*Gratz v. Bollinger/ Grutter v. Bollinger*).

Yet, it is not so much affirmative action per se that businesses support, as the most efficient, least troublesome way of dealing with minority integration. Their viewpoint is practical. And if corporate America now upholds the “business case for diversity” which capitalizes on the increasingly multicultural nature of the American society and states that affirmative action is no longer necessary, Professor Pauwels argues that we should not be ingenuous about this shift. While this new integration rationale has the advantage of turning the focus away from the much inflamed affirmative action debate, she proposes that diluting the focus on race and shifting the justification for integration from a

moral to an economic perspective, is also a way to evade hard choices about equality and justice at work. Discrimination at work is still an everyday reality, in spite of a discourse that would have us believe otherwise.

In addition, when business slackens, as was the case in the early 2000, cost-conscious managers tend either to narrow or to postpone their diversity programs whose real impact on the bottom line is difficult to measure.

Being a French scholar working on diversity issues in the United States, Professor Pauwels will also present the European perspective on the topic, as these issues can no longer be ignored inside the European Union. In 2000, European members adopted a directive on equality, and in October 2006, over a hundred leading French companies signed a national inter-professional agreement committing themselves to increasing diversity in the workplace.

Acknowledgements

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AGENDA

ACLU of Northern California
Applied Research Center
California Association of Black Lawyers
California Teachers Association
Charles Houston Bar Association
Chinese for Affirmative Action
Equal Education Opportunity Initiative
Equal Justice Society
Greenlining Institute
Thelton Henderson Center for Social Justice
Impact Fund
Los Angeles Unified School District
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
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Notes

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