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PERSPECTIVE

Is outcry over racial injustice echoing in boardrooms and college admissions offices?

By Dario Frommer

In California, the growing awareness of and outcry against institutional racism may be echoing beyond police and sheriff departments. The effort to remedy long simmering issues of racial and gender inequality and discrimination is also focusing on corporate boardrooms, college admissions offices, and state and local procurement.

This summer, amid headlines about national outrage and protest over the deaths of George Floyd, Breonna Taylor and others at the hands of police, the California Legislature quietly passed two important measures aimed at addressing institutional discrimination in corporations, on college campuses and in government agencies based on race, gender, national origin and sexual orientation.

In August, the Legislature by a two-thirds vote placed Proposition 16 on the November ballot to repeal a constitutional amendment adopted by voters in 1996 (Prop. 209) that outlawed the use of affirmative action programs in college admissions, and in public employment and contracting. Proposition 209, which passed with 54% of the vote and was supported by then Gov. Pete

Wilson (R), added Article I, Section 31 to the California Constitution which banned discrimination or preferential treatment by state and local government, “on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” The language went far beyond any limitations that the federal courts had placed on the use of racial preferences in education and employment under the 14th Amendment and California was forced to abandon many programs to advance racial and gender diversity in public education, employment and contracting. At the time, Wilson and other proponents argued that Prop. 209 aimed to ensure that government was “colorblind” and decisions on education and employment were made on the applicants’ merit.

Proposition 209 opponents have long argued that the initiative has had a deleterious effect on diversity in higher education and that it has perpetuated discrimination in public employment and contracting that harmed women and minority owned businesses and workers. Assemblywoman Dr. Shirley Weber (D-San Diego), the author of Prop. 16, argued that Prop. 209 has cost wom-

en-and minority-owned businesses \$1.1 billion each year, and perpetuated a wage gap wherein women make 80 cents on every dollar made by men, and allowed discriminatory hiring and contracting practices to continue unhindered. “Far from being colorblind, the bill

public colleges and universities and recruitment of a more diverse faculty. However, in July, the University of California announced it had admitted the most diverse freshman class in history. Of the 79,953 applicants offered admission, 36% are Hispanic, 35% Asian or Pa-

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has set up barriers to women and minorities to share in the economic life of California. Proposition 209 has hindered public policy, thwarted opportunity and maintained economic disparity long enough. It’s time to give voters a chance to right this wrong,” said Weber.

A 2015 Equal Justice Society study found an \$820 million dollar per year decrease in state contracting with minority and women owned companies since the adoption of Prop. 209, with additional decreases in contracting at the local level. Other studies have been critical of the impact of Prop. 209 on the admissions of Black and Latino students to California’s

cific Islander, 21% White, and 5% Black. According to 2018 U.S. Census Bureau statistics, California’s population is 59.5% White, 36.6% Hispanic, 14.7% Asian and 5.5% Black. In addition, in July Dr. Michael Drake was announced as the University of California’s first Black president.

California’s Legislature also took aim at increasing diversity in corporate board rooms where, despite recent gains, Blacks and Latinos still hold a small number of seats. AB 979 would amend the California Corporations Code to require publicly held domestic and foreign corporations that are headquartered in California

to appoint directors from “underrepresented opportunities”. The measure defines “underrepresented communities” as “Black, African-American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian or a gay, lesbian bisexual or transgender.”

By the end of 2021, AB 979 would require a publicly held domestic or foreign corporation with principal executive offices located in California to have a minimum of one director from an underrepresented community on its board. By the close of calendar year 2022, regulated corporations with nine or more directors would be required to have a minimum of three directors from underrepresented communities, while corporations with between four and nine directors would be required to have a minimum of three directors from underrepresented communities. Corporations with four or fewer directors would be required to have at least one director from a disadvantaged community. In addition, corporations would be required to

file information with the Secretary of State concerning their compliance with the act. The measure proposes a first time penalty of \$100,000 for failure to comply with Assembly Bill 979 reporting requirements and a \$300,000 penalty for subsequent violations. California law currently requires that a publically held corporation whose principal executive offices are located in California must have a minimum number of female directors on its board by 2021.

According to a 2019 Deloitte study of Fortune 500 company boards, only 8.6% of directors were Black or African-American, 3.8% were Latino and 3.7% were Asian. A survey by the Latino Corporate Directors Association of 662 publicly traded companies headquartered in California found that 90% of CEO’s were white and that only 13% had at least one Hispanic or Latino board member; 16% had at least one Black board member. Meanwhile, a 2019 PWC survey of corporate director attitudes found a marked decrease in support

for ethnic and gender diversity initiatives and strong opposition to state mandates on board composition.

“Corporations have money, power and influence,” said AB 979 author Assemblyman Chris Holden (D-Pasadena) earlier this month. “If we are going to address racial injustice and inequity in our society, it’s imperative that corporate boards reflect the diversity of our state.”

While measures like AB 979 and Prop. 16 will not remedy bias in corporate and state institutions overnight, they send an unmistakable message that diversity and equal opportunity are values that should be integral to decision making in our major institutions. Voters and the governor will decide whether or not to send it. ■

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