

Crunch time on Prop. 209

EDITORIALS

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Implementing Proposition 209 — the initiative that bars race and gender discrimination by state and local governments in California — doesn't have to be expensive. But it could be quite costly if elected officials balk at complying, so that a succession of lawsuits would be required to make the initiative's guarantee of equal opportunity a reality.

In San Francisco, Mayor Willie Brown is courting expensive litigation against the city by publicly refusing to bring city programs and policies into conformance with 209.

In the Legislature, there hasn't been any such explicit flouting of the public will — but neither has there been any movement to repeal laws that conflict with it.

As a result, Gov. Wilson this week issued a formal statement calling for rescinding of 31 laws that base state policy on the color or sex of individuals — policies ranging from preferences for members of certain minority groups in granting transfer admissions to public universities, to preferences in hiring by community colleges.

"What I hear a lot of city and county officials saying up and down the state is, 'We believe our programs are already in compliance,'" Jennifer Nelson, who was media director for the 209 campaign and is now executive director of the American Civil Rights Institute, told us on Wednesday. "There will have to be freedom of information requests by my organization and other concerned citizens to make sure we know what policies are actually being followed by these jurisdictions. I'm sure some officials merely need some time to make sure they're in compliance. But there are others — given the level of opposition of many politicians around the state, and their earlier claims 209 would have catastrophic results — who invite skepticism when they suddenly say all their policies were already in compliance with the new law."

Shawn Steel, a Newport Beach trial attorney who was active in the 209 campaign, sees aggressive litigation on many fronts as 209's implications get fleshed out. "I have a relative who's an instructor at an Inland Empire community college, who had been told for years that he couldn't be considered for tenure because he was male and white," Mr. Steel told us. "He is the sort of person who now becomes empowered as a plaintiff under 209." Mr. Steel points out that, as with litigation under traditional federal civil rights statutes, Prop. 209 allows attorneys for victorious plaintiffs to recover legal fees as part of the court award, "so there will be an incentive for tort lawyers, even those who might have opposed Prop. 209 at election time, to champion clients who now invoke 209 with legitimate claims their rights have been violated."

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To the degree such lawsuits are well-grounded, they could exact a high price from governments slow to obey the law.

It is welcome news, therefore, that Orange County CEO Jan Mittermeier several months ago ordered a review of programs under her jurisdiction to gauge their compatibility with Prop. 209. Assistant County counsel Jim Mead told us on Wednesday that fewer than 10 such programs have been identified to him as requiring scrutiny. He expects to issue a judgment on them by the end of this week. To be sure, independent scrutiny of county programs, from groups such as Ms. Nelson's, would still be beneficial, but Ms. Mittermeier is displaying the kind of proactive response that can minimize taxpayer liability — and maximize the county's commitment to equal justice.

Unfortunately, not every jurisdiction is acting with such dispatch. The California State University system, for instance, seems disturbingly relaxed in its response to 209. This cannot be because it lacks for programs deserving review. "Most egregiously, there is the 'Doctoral Forgivable Loan Program.'" All Raza, a business professor at Cal State Sacramento, reminded us on Wednesday. "It provides up to \$30,000 in loans for doctoral work — loans that can be forgiven in part or in whole for recipients who go on to become instructors in the Cal State system. Problem is, it's available to various minority groups and to women and disabled people, but not to white males unless they're lucky enough to be disabled."

A spokesman for the Cal State system told us yesterday that any program potentially running afoul of Prop. 209 "will need to be reviewed." But a system-wide process for doing so has not yet been established, Ken Swisher told us. "This is going to be a long process while people are adjusting to figuring out what the law means," he said. He told us there has been no formal instruction from the chancellor's office asking CSU officials to review how their programs conform to 209.

People can't be treated differently by state or local governments based on their race and gender. That is the meaning of Prop. 209 under any straightforward reading. No process of subtle interpretation is necessary. Its mandate is as plain as the noon-day sun. California governments and state agencies should do taxpayers the favor of adopting that honest interpretation sooner, rather than later under court order.