

EQUAL OPPORTUNITY: THE EVIDENCE FROM CALIFORNIA



A report on equal opportunity in the State of California, including evidence of inequality and a review of diversity in the public sector.

A companion report provides a national overview of equal opportunity, including its importance and history, key lessons, and a list of additional resources.

Download these reports at:
law.berkeley.edu/files/EOTTheEvidenceCalifornia
law.berkeley.edu/files/EOTTheEvidence

EQUALITY IN CALIFORNIA

OPPORTUNITY AND DISPARITY

Although all people face challenges, there is ample evidence that California's women and people of color still face significant barriers to opportunities.

CALIFORNIA AND EQUAL OPPORTUNITY

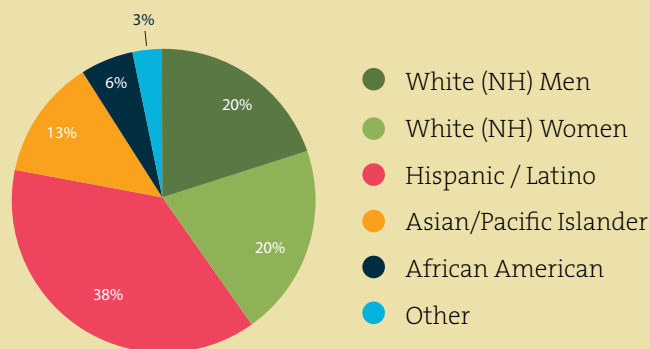
Equal opportunity is deeply rooted in the American ideals of fairness, justice, and equality. Programs to meet the goals of equal opportunity seek to realize these basic values. Moreover, equal opportunity not only helps individuals but also helps communities in need and benefits our larger society.

In California, people of color and women continue to face discrimination and disparity. However, the use of equal opportunity programs has been curtailed by Proposition 209. Passed by voters on November 5, 1996, Proposition 209 forbids the use of traditional affirmative action programs in the public sector. Despite numerous legal challenges, as of 2012, Proposition 209 is the law in California.

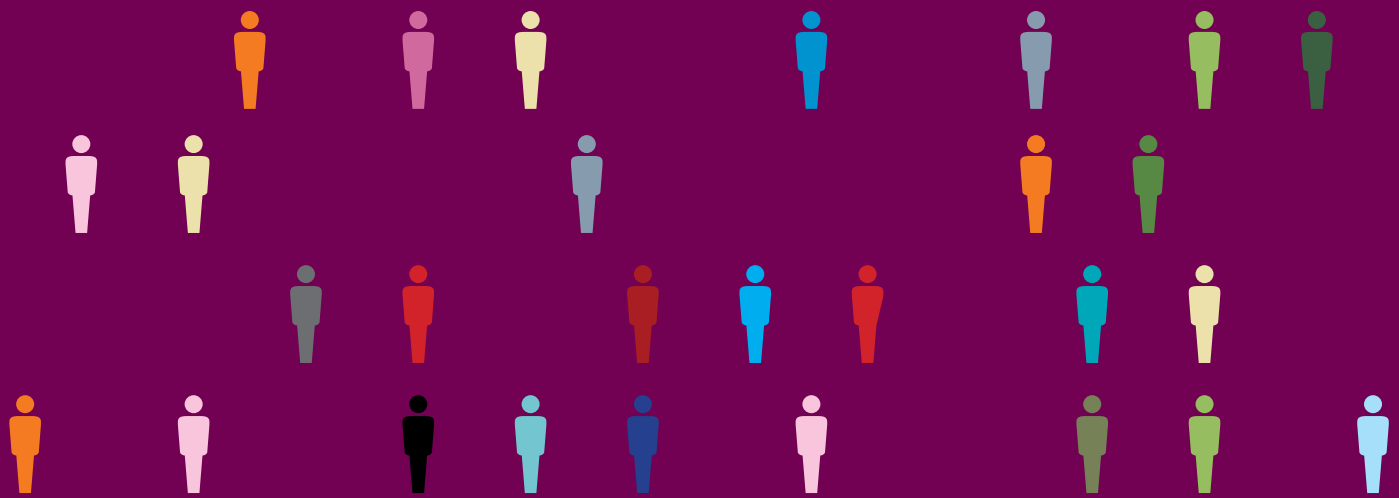
It has been over fifteen years since the passage of Proposition 209, allowing for a thorough review of its impact in California. This report examines the current state of equal opportunity in California in public education, employment, and contracting. It highlights the areas where opportunity continues to be limited or reduced in the years since the passage of Proposition 209. Additional details are available in the companion report, *Equal Opportunity: The Evidence* (law.berkeley.edu/files/EOTTheEvidence).

CALIFORNIANS TODAY

California was one of the first and remains the largest state in which people of color outnumber non-Hispanic Whites (White (NH)). The White (NH) and African American populations are both lower than the national average, but all other groups are represented at higher rates. Together, women and people of color constitute 80% of California's population.



2010 Census Summary File 2, Tables PCT3 and PCT4
U.S. Census Bureau



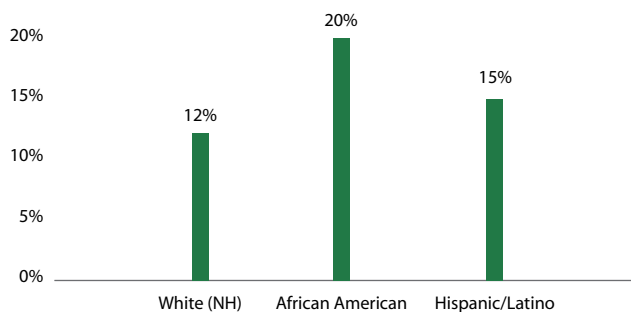
EVIDENCE OF INEQUALITY

Regrettably, though progress has been made, there is ample evidence that equality remains elusive for some Californians. In fact, **women and people of color face disparity and discrimination in employment, homeownership, poverty rates, and education.**

UNEMPLOYMENT RATES

The unemployment rate was substantially higher for African Americans and Hispanic/Latinos in 2010 than for Whites (NH).

Unemployment Rate



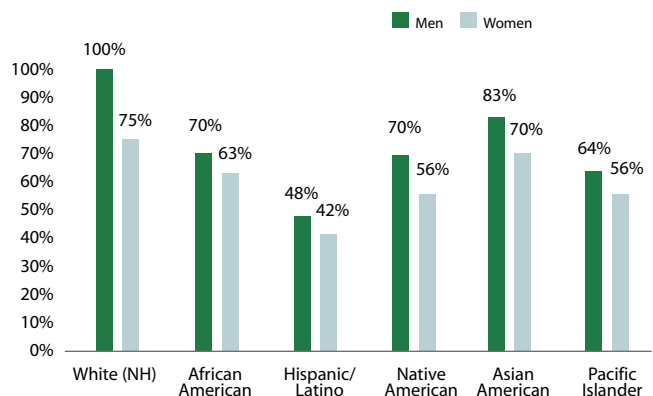
Source: Bureau of Labor Statistics

Employment Status of the Civilian Noninstitutional Population by Sex, Race, Hispanic or Latino Ethnicity, Marital Status, and Detailed Age, 2010 Annual Averages
 Bureau of Labor Statistics
www.bls.gov/lau/table14full10.pdf

COMPENSATION

In California, between 2006 and 2010 for full-time employees, women earned, on average, almost \$8,500 less per year compared to men (\$49,517 to \$41,036). White (NH) women, women of color, and men of color all earned substantially less per year than White (NH) men.

Earnings Relative to White (NH) men



Source: U.S. Census Bureau, 2006-2010 American Community Survey

Median Earnings in the past 12 Months (in 2010 Inflation-Adjusted Dollars) by Sex by Work Experience in the Past 12 Months for the Population 16 Years and Over with Earnings in the Past 12 Months
 U.S. Census Bureau, 2006-2010 American Community Survey

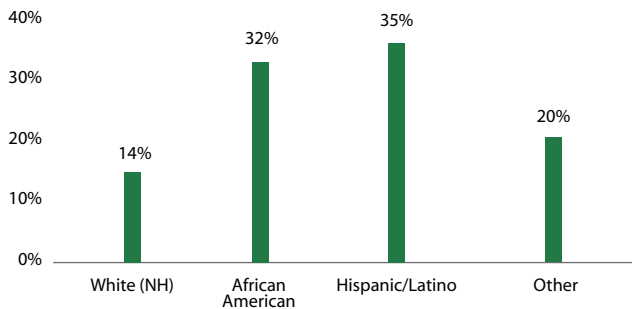
EQUALITY IN CALIFORNIA

OPPORTUNITY AND DISPARITY

POVERTY

In 2009/2010, people of color in California were much more likely to live in poverty. The poverty rates for both African Americans and Hispanic/Latinos were each more than double the rate for Whites (NH).

Population in Poverty



Source: Urban Institute and Kaiser Commission on Medicaid and the Uninsured analysis of U.S. Census Bureau data

Poverty Rate by Race/Ethnicity, States (2009-2010)

Urban Institute and Kaiser Commission on Medicaid and the Uninsured estimates based on the Census Bureau's March 2010 and 2011 Current Population Survey (CPS: Annual Social and Economic Supplements)

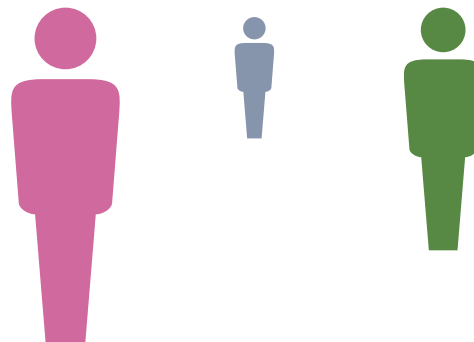
<http://www.statehealthfacts.org/comparebar.jsp?ind=14&cat=1>

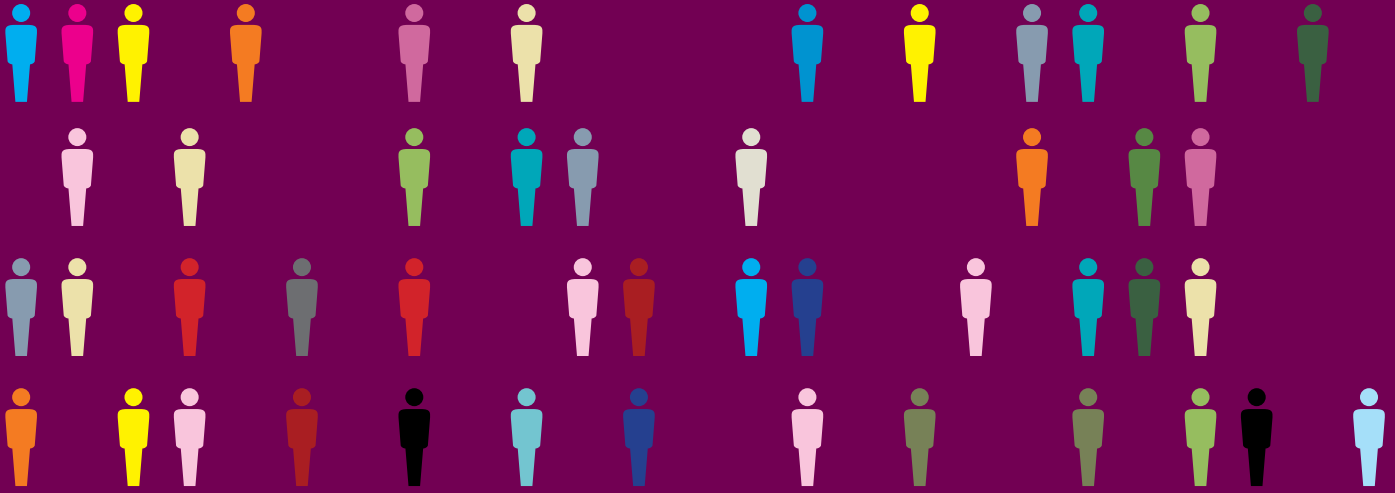
HOMEOWNERSHIP

In 2010, people of color were less likely to own their own homes. Only 45% of people of color were homeowners relative to 64% of Whites (NH).

Homeownership by Race

Corporation for Enterprise Development, Assets and Opportunity Scorecard, Analysis of 2010 American Community Survey scorecard.assetsandopportunity.org/2012/measure/homeownership-by-race?state=ca

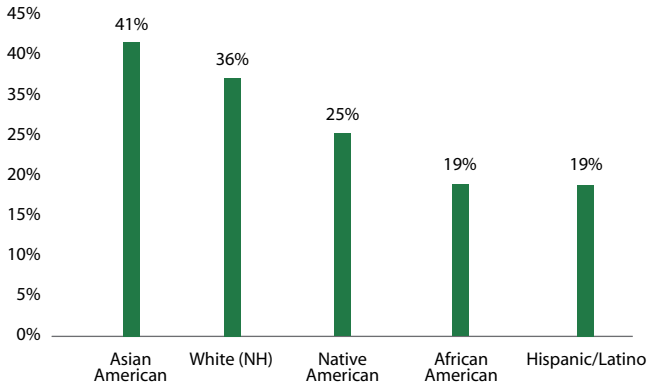




EDUCATION

Native Americans, African Americans, and Hispanic/Latinos were less likely to be enrolled in well-resourced, high-performing schools in California.

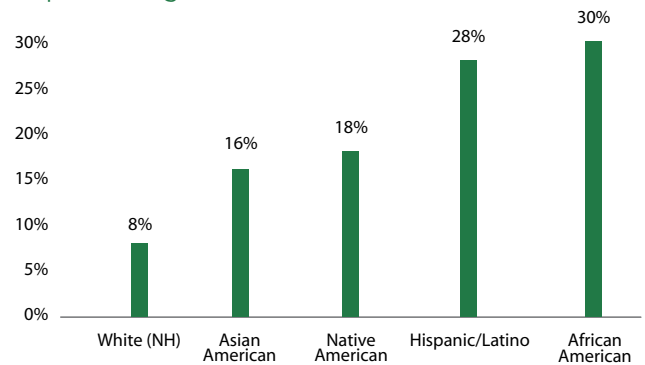
Students Enrolled in Well-resourced, High-performing Schools



Source: Schott Foundation for Public Education analysis of National Assessment for Education Progress data (redesigned by authors)

On the other hand, Asian Americans, Native Americans, Hispanic/Latino Americans, and African Americans are overrepresented in poorly-resourced, low-performing schools relative to White (NH) students.

Students Enrolled in Poorly-resourced, Low-performing Schools



Source: Schott Foundation for Public Education analysis of National Assessment for Education Progress data (redesigned by authors)

State Data and Analysis: California
 Schott Foundation for Public Education, National Opportunity to Learn Campaign
www.otlstatereport.org/states/california

Additionally, as of 2008, the diversity of teachers and principals did not match the diversity of California's students, accounting for less than half of the diversity that would be expected given the student population. In California's K-12 public schools, people of color make up:

- 68% of the students
- 30% of the teachers
- 26% of the principals

School and Staffing Survey (2007-2008 Academic Year)
 National Center for Education Statistics
nces.ed.gov/surveys/sass/tables/sass0708_2009321_sls_03.asp (students)
nces.ed.gov/surveys/sass/tables/sass0708_2009324_tls_02.asp (teachers)
nces.ed.gov/surveys/sass/tables/sass0708_2009323_pls_02.asp (principals)

DIVERSITY IN THE PUBLIC SECTOR

THE AREAS DIRECTLY AFFECTED BY PROPOSITION 209

This section summarizes recent research about California's diversity in three areas that have been directly affected by Proposition 209: public contracting, education, and employment.

PUBLIC CONTRACTING

Data from the California Department of Transportation (Caltrans) were used to analyze public contracting. One of the largest public contracting agencies in the state, Caltrans awarded over 2.8 billion dollars in 2011.

In 1995, then Governor Pete Wilson signed Executive Order W-124-95, which dismantled all equal opportunity efforts put into place by previous governors, including those being utilized for public contracts. After the passage of Proposition 209 in 1996, Caltrans eliminated its statewide affirmative action program, but continued to operate an equal opportunity program for federal awards as mandated by federal law. This Disadvantaged Business Enterprise (DBE) program supports equal opportunity for small businesses owned by people of color and women.

During the 1980s and early 1990s, when equal opportunity programs were widely utilized, awards to businesses owned by people of color and women rose, reaching a high of 28% in 1994. After equal opportunity programs were dismantled or scaled back in 1995-96, awards to people of color and women plummeted. Awards fell to less than 10% by 1998 and have never recovered, despite California's increasing diversity during this time.

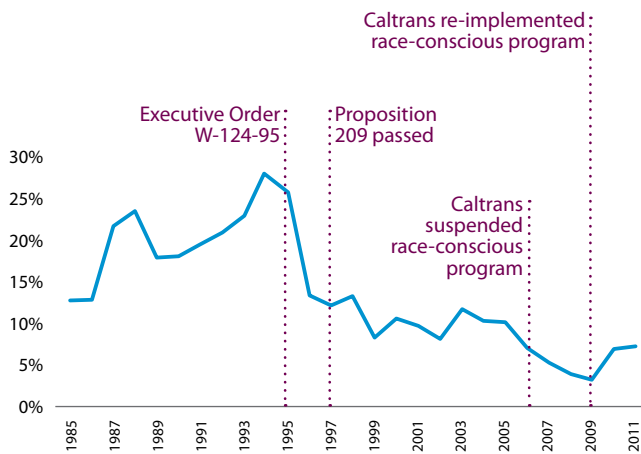
Although supporters of Proposition 209 claimed it would create equal opportunity, female contractors and contractors of color believe that it failed to address the root causes of the discrimination and disparity they faced. In fact, they note that it appears to have had a chilling effect on contracting diversity in the state. For example, one female contractor noted:

"When Proposition 209 passed, I was working on \$200,000 worth of projects. The day after Proposition 209 passed, the senior project manager walked up to me and said, 'Hey, Prop 209 passed, and we don't have to use you anymore.'"

Starting in 2006, awards fell even further when Caltrans suspended its race-conscious DBE program in order to avoid a lawsuit by equal opportunity opponents. The program was re-implemented in 2009 after a disparity study provided support for the program, at which point awards to people of color- and women-owned businesses started to rebound.



Awards to Businesses Owned by People of Color and Women



Source: Caltrans

DISPARITY STUDIES

A disparity study measures the amount of public contracting dollars that might be expected to go to businesses owned and operated by people of color and women in a non-discriminatory environment compared to what they actually receive.

In a study published in 2007, disparity was assessed both for federal and state awards. For federal awards,

Caltrans operated an equal opportunity program per federal law. For state awards, Caltrans ceased operating its equal opportunity program after the passage of Proposition 209.

The study found evidence of disparity for both federal and state awards. The rates of disparity were two to three times higher for state awards, suggesting reduced opportunities for people of color- and women-owned businesses as a result of eliminating the equal opportunity program. Caltrans is currently commissioning a second disparity study.

Availability and Disparity Study: California Department of Transportation
 BBC Research & Consulting for Caltrans
www.dot.ca.gov/hq/bep/study/disparity_study.htm

Free to Compete? Measuring the Impact of Proposition 209 on Minority Business Enterprises
 Discrimination Research Center
www.law.berkeley.edu/files/thcsj/Free_to_Compete.pdf

A Vision Fulfilled? The Impact of Proposition 209 on Equal Opportunity for Women Business Enterprises
 Thelton E. Henderson Center for Social Justice
www.law.berkeley.edu/files/thcsj/A_Vision_Fulfilled_Sept_2007.pdf

DIVERSITY IN THE PUBLIC SECTOR

THE AREAS DIRECTLY AFFECTED BY PROPOSITION 209

PUBLIC HIGHER EDUCATION

California's public higher educational system includes the top-tier University of California (UC) system (10 campuses), the California State University (CSU) system (23 campuses), and the California Community College (CCC) system (109 campuses). Schools such as the University of California, Berkeley (UC Berkeley) and the University of California, Los Angeles (UCLA) are considered to be elite universities.

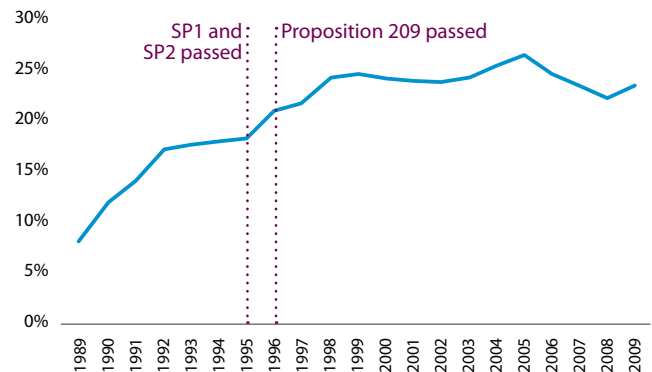
In 1995, the UC Board of Regents passed two policies (SP1 and SP2) that barred the consideration of race, ethnicity, and gender in the University of California system for student admissions, employment, and contracting. The community college and state college systems were also barred from using affirmative action by the passage of Proposition 209 in 1996.

After the passage of Proposition 209, the number of undergraduate and graduate students of color fell sharply at several schools, including UC Berkeley and UCLA. As of 2009 and 2010, the number of students of color has been increasing. However, much of this gain is due to the increasing diversity of the state's population, rather than a reduction in discrimination or the elimination of affirmative action.

A UC system examination of twenty years of data regarding underrepresented students of color (African Americans, Hispanic/Latinos, and Native Americans) highlights how these trends have changed over time. In 1989, the first year of available data, the gap between

graduating high school seniors and undergraduate enrollment for underrepresented students of color was 8%. This gap rose steadily for ten years and peaked at 26% in 2005. The gap remains high; in 2009, it was 23%.

The Gap Between UC Enrollment and High School Graduation Rates for Underrepresented Students of Color



Source: University of California

A review of enrollment rates at UC's graduate schools also offers evidence of disparity. African American and Hispanic/Latino enrollment at both UC Berkeley's and UCLA's law schools fell sharply after the passage of Proposition 209, erasing decades of gains in enrollment.

Percentage People of Color

			UC	CSU	CCC
Graduating High School Seniors	64%	Students	59%	50%	59%
		Faculty	25%	29%	30%
Californians aged 18 to 64	57%	Administrators	18%	29%	30%

As the table above shows, people of color comprise 64% of high school graduates, but a somewhat smaller percentage of the undergraduates in the public higher education system. People of color are much less likely to be faculty or administrators relative to their share of the student population or adults aged 18 to 64 in California.

In the UC system, the high numbers of Asian American students mask the underrepresentation of African American, Hispanic/Latino, and Native American students relative to their percentage of graduating high school seniors.

Overall, Proposition 209 appears to have led to a reduction in the enrollment of students of color in California's higher education systems. The effect was most pronounced in the UC system. Although the diversity of California's public universities and colleges is increasing, particularly for Asian Americans, a significant portion of this is the result of the increasing diversity of high school seniors. The faculty and administrators of the public education system, however, do not reflect the student population or the population as a whole of the State of California.

Equal Opportunity in Higher Education: The Past and Future of California's Proposition 209

Eds. Eric Grodsky & Michal Kurlaender

www.hepg.org/hepg/book/127/EqualOpportunityInHigherEducation

The Struggle for Access from Sweatt to Grutter: A History of African American, Latino, and American Indian Law School Admissions, 1950–2000

William C. Kidder

www.law.harvard.edu/students/orgs/blj/vol19/kidder.pdf

Ralph J. Bunche Center for African American Studies

www.bunchecenter.ucla.edu/index.php/2012/05/bunche-research-report/

The University of California system

www.universityofcalifornia.edu/diversity/staff/career_workforce_2009.pdf

www.ucop.edu/acadpersonnel/datamgmt/documents/allranks09_discipline_ethnicity_race.pdf

www.universityofcalifornia.edu/diversity/documents/diversity-accountability-report-and-appendix-0910.pdf

The California State University system

www.calstate.edu/hr/employee-profile/documents/Fall2010CSUProfiles.pdf

www.calstate.edu/as/stat_reports/2010-2011/feth01.htm

The California Community College system

datamart.cccco.edu/Students/Enrollment_Status.aspx
employeedata.cccco.edu/statewide_summary_11.pdf

High School Graduation Rates

California Department of Education

dq.cde.ca.gov/dataquest/GraduateReporting/GraduatesByEth.aspx?cTopic=Graduates&cChoice=StGrdbyEt&cYear=2008-09&level=State&cType=All&cGender=B&cGroup=G12

DIVERSITY IN THE PUBLIC SECTOR

THE AREAS DIRECTLY AFFECTED BY PROPOSITION 209

PUBLIC EMPLOYMENT

As of 2011, the State of California employed 216,261 people. This workforce was 48% White (NH) and 53% male. Research examining trends over time finds that people of color and women have been modestly underrepresented relative to the private sector and people between the ages of 18 to 64 in California.

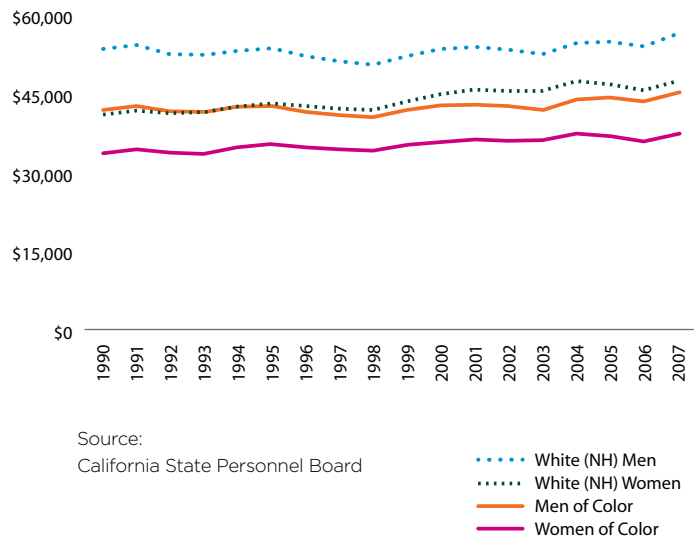
Among people of color, African Americans were employed at higher rates and Hispanic/Latinos at lower rates than expected compared to their proportion of the population. As the State of California has grown more diverse, its public workforce has also grown more diverse.

The passage of Proposition 209 appears to have not significantly altered diversity in public sector employment. However, research suggests that diversity in the private sector decreased after Proposition 209's passage. This trend suggests that a statewide chilling effect may have occurred in employment, as it did in contracting, in which equal opportunity was devalued and decision makers may have been fearful to take race, ethnicity, or sex into consideration in order to remedy discrimination.

COMPENSATION AND POSITION

Men of color and White (NH) women working for the State of California earned about 80% of the compensation of White (NH) men, while women of color earned less than 70% of White (NH) men.

Compensation of State of California Employees



White (NH) men are particularly overrepresented in high-level executive positions (called Career Executive Assignment positions), which come with increased responsibilities and compensation. Men and women of color continue to be underrepresented in these high-level positions, though White (NH) women have shown steady gains in this area.

Overall, research suggests that Proposition 209 had a limited impact on public employment. Although public employment overall in California is diverse, women of color, men of color, and White (NH) women still earn less than their White (NH) male counterparts, and people of color continue to struggle to reach top positions.

Annual Census of Employees in the State Civil Service: 2010 – 2011 Fiscal Year
California State Personnel Board
www.spb.ca.gov/WorkArea/showcontent.aspx?id=7120

Proposition 209 and Public Employment in California: Trends in Workforce Diversity.
Thelton E. Henderson Center for Social Justice at Berkeley Law.
www.law.berkeley.edu/files/September_2008_Proposition_209_and_Public_Employment_-_Workforce_Diversity.pdf

The Impact of Proposition 209 on Public Employment in California
Michael Sumner
www.law.berkeley.edu/files/Prop209EmploymentCAERP.ppt

Myers, C.K. (2007). "A Cure for Discrimination? Affirmative Action and the Case of California's Proposition 209." *Industrial & Labor Relations Review*. 60(3), 379-396

U.S. Census Bureau
www2.census.gov/govs/apes/10stca.txt
www2.census.gov/govs/apes/10locca.txt

SUMMARY

There is ample evidence that disparity is still prevalent in the State of California. While there are some promising trends in the public sector, it is clear that discrimination and disparity have not yet been fully remedied in housing, education, employment, and other sectors.

Though the research results are complex, the passage of Proposition 209 in 1996 (and additional anti-equal opportunity policies in higher education and contracting) appear to have limited opportunities in the State of California for people of color and women.

For an overview of equal opportunity at the national level and details on current research in states where equal opportunity efforts have been limited, please see the companion packet to this report:

Equal Opportunity: The Evidence
law.berkeley.edu/files/EOTTheEvidence



EQUAL OPPORTUNITY: THE EVIDENCE FROM CALIFORNIA

THE HENDERSON CENTER FOR SOCIAL JUSTICE, BERKELEY LAW
IN PARTNERSHIP WITH THE MWM CONSULTING GROUP, LLC

JULY 2012



The MWM Consulting Group, LLC conducts research and provides technical assistance to advance concepts of fairness, diversity, and inclusion in the public and private sphere. Toward the goal of elevating a collective consciousness and implementing policies that promote fairness and diversity, the MWM Consulting Group, LLC facilitates processes to remove structural barriers to equality and justice for all.

www.mwmconsultinggroupllc.com



Thelton E. Henderson
Center for Social Justice

The intellectual hub of the law school's vibrant social justice community, the Thelton E. Henderson Center for Social Justice is a training and research center that prepares the next generation of lawyers to represent underserved communities and produces innovative and accessible scholarship on issues of race, sex and poverty.

Thelton E. Henderson Center for Social Justice
University of California, Berkeley, School of Law
2850 Telegraph Ave., Suite 500
Berkeley, CA 94705-7220
www.law.berkeley.edu/HendersonCenter.htm

This report was made possible by the generous support of the
Fulfilling the Dream Fund, Public Interest Projects.