

# Agenda Report

September 8, 2003

TO: City Council

FROM: City Manager

SUBJECT: **OPPOSITION TO PROPOSITION 54 "CLASSIFICATION BY RACE, ETHNICITY, COLOR OR NATIONAL ORIGIN CONTIUTIONAL INITIATIVE"**

**RECOMMENDATION:**

It is recommended that the City Council oppose Proposition 54 because impacts to local governments are unclear and authorize staff to communicate the City's position.

**PROPOSITION SUMMARY:**

Proposition 54, also known as the Racial Privacy Initiative, will appear on California's October 7, 2003 special election ballot. Authored by Ward Connerly, the Racial Privacy Initiative seeks to prohibit state and local governments from collecting data on an individual's race, ethnicity, color or national origin for the purpose of public education, contracting and employment. Racial check-off boxes would be phased out in state and local government forms by 2005.

Three areas are exempted from Proposition 54. The initiative includes a ten-year exemption for the Department of Fair Employment and Housing (DFEH) with respect to DFEH-conducted classifications in place as of March 2002. After the ten-year exemption expires, the department's workload would be reduced under the provisions of the initiative. In addition, there are exemptions related to certain law enforcement activities, court orders and consent decrees and federal requirements. Finally, there are exemptions for medical research and treatment such as Tay-Sachs, sickle cell anemia, and breast cancer.

**BACKGROUND:**

Proponents argue that racial classification and tracking unnecessarily invades an individual's right to privacy. Race and national origin should be accorded the same privacy protection given to religion and sexual orientation. In addition, they argue that Proposition 54 would guarantee a "colorblind" approach to government hiring and contracting, and; that it would ultimately result in costs savings by allowing agencies to award to low bid without consideration of race and by reducing staff required for the collection and tracking of data.

Opponents of Proposition 54 argue that it will hinder the state's ability to effectively identify and track discrimination and will prohibit the enforcement of anti-discrimination laws. The collection of racial data is critical in ensuring that discrimination is not practiced. In addition, they argue that the collection of racial data is crucial to understanding the trends that assist law enforcement in responding to and preventing hate crimes. Finally, they argue that educators and administrators will be unable to determine whether the educational needs of a particular racial or ethnic group are met. Proposition 54 would make it impossible to identify racial trends in dropout rates, test scores, or craft effective outreach and educational programs.

Strong arguments have been made on both sides of Proposition 54. However, the most compelling issue at hand is the lack of clarity regarding the implementation of Proposition 54 and the resulting impacts on health care, public safety, hiring and education. The exemptions are vaguely written and leave significant questions about how the initiative will actually affect delivery of these services. For example, the author has stated that police and correctional officers may use racial classifications in the interest of public safety. However, the written language of the exemptions is not clear, leaving questions about the handling of hate crimes. As another example, the author stated that all racial categorization made by health care and medical professionals is exempt. The exemption language refers only to medical research subjects and patients however. The University of California Regents vote to oppose the initiative stated that the "research-related issues are complex and the answers . . . not entirely clear."

**Local Government Impacts**

In most cases, the federal government requires this information to ensure compliance with federal nondiscrimination laws (equal employment opportunity laws) and as a condition of receiving various federal funds (education and Medi-Cal). Pursuant to the provisions of Proposition 54, local governments that are required to comply with federal law and receive federal funding would continue to collect racial data. Check off boxes will not be removed from any federal forms utilized by local governments.

***Public Health Impacts***

If passed, this initiative could have a detrimental effect on the public health of Californians by eliminating the ability to evaluate health needs of diverse communities and crippling the ability to effectively address health disparities. National, state and local data indicates that significant disparities in health outcomes and incidence of disease, access to health care, and exposure to environmental health hazards exist across different racial and ethnic groups.

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Some examples of these disparities are:

- White women have the highest incident rates of breast cancer but African American women are more likely to die from the disease
- Latinos are the most likely to be uninsured of all racial groups
- Vietnamese women have the highest cervical cancer rates of all women
- Infant mortality rates and percent of low-birthweight infants of African American women is the highest of all racial groups.

Having access to race and ethnic specific data helps to aim early diagnostic and preventive services to communities and populations at greatest risk. Awareness of target populations and cultural competence of programs, services, and educational campaigns, maximizes efficiency and cost effectiveness. If resources are focused on the target populations and information is conveyed in ways that reach this population, disease can be more aggressively eliminated. Without the ability to collect race and ethnicity information, assess and chronicle disease patterns and trends, and understand the reasons for disparities, the effectiveness of disease prevention activities will be severely compromised.

Not collecting race and ethnicity data may also put the state of California at a distinct disadvantage in its ability to secure future funding streams that may be based on this information. Various funding sources have shown an interest in innovative strategies to address health disparities. Without the data that illustrates health disparities, California's public agencies will not be able to build a case for the need for or the effectiveness of its programs in addressing these disparities. While the initiative does allow for continued collection of race related information to meet federal requirements and remain eligible to receive federal funding, it is unclear how it will impact federal funding filtered through state and county agencies. It would also prohibit use of this data for other purposes that would include private foundation funding.

The initiative's "medical research" exemption is unclear. The term medical research generally refers to controlled experiments that involve a group of patients or research subjects who are aware of their involvement in a medical research project and who give consent to participate in an experiment as a subject. If this definition were used, the exemption would not cover many of the critical data sets used by public health officials and health providers to design prevention and treatment programs that meet the health needs of particular communities and populations. For instance, data gathered through surveys, questionnaires, interviews or epidemiological research does not fall under the definition of "medical research" and would be eliminated.

### ***Human Resources Impacts***

The author describes any classification by race that is required for the receipt of Federal funds as exempt from Proposition 54. Although this is not entirely clear in the language of the Proposition, if it is the receipt of federal funding that creates the exemption, the City would be precluded from gathering this information from employees and applicants for employment. Although the Federal Equal Employment Opportunity Commission

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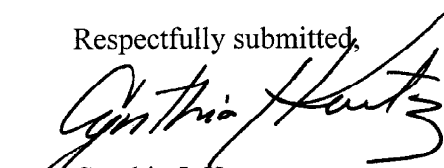
requires that public agencies report race statistics biennially, no federal funding is associated with this reporting.

If the information is gathered in order to obtain Federal funding for other programs (COPS grants, for example), it appears as though the use of this information for any other purpose may be prohibited. Those other purposes include the statistical analysis of applicant pools to determine whether a testing process results in an adverse impact on a protected group, and in determining whether the City's workforce is generally reflective of the community served. Further, concern exists whether under Proposition 54, disciplinary action may be taken for race-based rule violations, such as race discrimination or harassment.

**FISCAL IMPACT:**

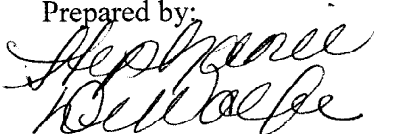
The fiscal impacts resulting from the implementation of Proposition 54 cannot be defined due to the lack of clarity in the language of the initiative.

Respectfully submitted,




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