March 27, 2026

Dear Senator:

I am General Counsel for the Center for Equal Opportunity (CEO), which has promoted colorblind equal opportunity and nondiscrimination in America for 30 years and counting. On behalf of CEO, I write to urge you to oppose Assembly Constitutional Amendment 7 (ACA7), because its passage would lead California into a hopeless quagmire of employment and civil rights litigation.

ACA7 seeks to amend California's constitution from the language added in the 1996 amendment as provided by Proposition 209 as follows:

> "The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, color, sex, ethnicity, or national origin in the operation of public employment, ***higher education admissions and enrollment*** ~~public education~~ or public contracting." Cal. Const. art. I, § 31.

This change invites the State of California to trample on the civil rights of college students in a variety of contexts, and upon the rights of K-12 students in every context, and should be rejected.

If ACA7 should pass, institutions of higher education would be permitted under the state constitution to provide financial aid to California students on the basis of race. This would not, however, create a right for California to discriminate against students on the basis of race either under the U.S. Constitution or the Civil Rights Act of 1964's Title VI. If institutions accept the invitation offered by ACA7 to violate the rights of California students on the basis of their race, those students will sue, and we expect they will prevail.

To understand the risk that California is inviting, we must begin with a line of Supreme Court cases that nibbled at the edges of students' protections under Title VI, starting with *Regents of the University of California v. Bakke* (1978), *Grutter v. Bollinger* (2003) and *Fisher v. University of Texas* (2013, 2016), which provided a framework for limited affirmative action in the context of admissions in higher education. Importantly, these cases never allowed infringements on the rights of students of disfavored races and ethnicities as a form of reparations for favored minorities, but instead construed affirmative action programs as providing a benefit to the institution at large in the form of diversity. Under these cases, it never would have been permissible to give advantageous financial aid packages or other on-campus benefits exclusively to groups from preferred racial and ethnic backgrounds. Furthermore, the limit for that affirmative action framework was finally reached in 2023, when the majority in *Students for Fair Admissions (SFFA)* determined that race-based admissions preferences violate both the U.S. Constitution and Title VI of the Civil Rights Act.

To the extent that proponents of ACA7 believe they have sidestepped the holding of *SFFA* through their wordsmithing, they have it exactly backwards: the affirmative action programs that *SFFA* deemed

impermissible were always carveouts to a U.S. Constitution and Civil Rights Act that generally forbade these kinds of racial preferences. That reality was underscored by the Supreme Court's 9-0 opinion in *Ames v. Ohio* (2025), which held that the Civil Rights Act applies to the majority in equal footing to minority groups, and there can be no special bar for proof of so-called "reverse" discrimination.

Passing ACA7 would be a grave error. I urge you to open the door neither for the violation of the rights of Californians, nor the taxpayer expense in the form of litigation and damages that will immediately follow.

Sincerely,

Shawna Bray
General Counsel