

Statement on Proposition 209 at UCSD

UCSD's interpretation of allowable actions under Proposition 209 works to subvert attainment and covers for potentially discriminatory practices. The message given by people charged with communicating UCSD's approach to Proposition 209 for faculty hiring is that a department needs to do everything that it can to increase the pool in any recruitment situation, and then not to consider race, ethnicity, gender, or other identified characteristics during the subsequent interviewing, deliberation, and selection phases of a job search. The message is on point in representing the legal meaning of Proposition 209, but how it is interpreted in practice enables and protects discriminatory practices.

Proposition 209 says that *"The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting"*. [Sec. 31a] Since one can neither discriminate nor give preference, the university has an interest in locating any existing structures or practices that may work to promote inequitable treatment in the process of hiring at UCSD, conditions that potentially lead to discrimination. In such cases, Federal Affirmative Action regulations, and state law, requires the university to take steps to remove any obstacles that perpetuate discrimination.

Hiring departments, following the dictum that they may not take race, ethnicity, or gender into account after the pool has been properly constituted and certified by the relevant Dean, can take actions that lead to potential discriminatory behavior because of the manner in which UCSD's faculty and administrators generally understand the message. Many interpret the Proposition 209 prohibitions to mean that hiring departments may not consider skills and abilities that may be understood to correlate with race or ethnicity. When such skills or abilities are identified and brought up in the discussion of candidates, that act itself is interpreted as evidence of racial or ethnic preference. Coupled with little or no history of investigating hiring records that show evidence of preferential treatment to white candidates, the faculty culture around hiring at UCSD works to suppress attributes in a candidate's files that would enhance the diversity of the campus.

Consider the following scenarios.

Scenario 1 – Historical

- Department A writes an inclusive and broadly reaching job advertisement and places it effectively in order to recruit an applicant pool that approximates the racial demographics of Ph.D. recipients available among recent graduates in the field.
- Department A has not hired a candidate for a job from an historically underrepresented minority group during the last 10 years, nor have any appeared on a short list during the last 5 years.
- Department A could feel very proud of itself because they successfully recruited a pool which included minority candidates, and think that they have done their best to reverse their past history — no need to do more.
- According to UCSD's interpretation of Proposition 209, as generally understood by faculty, Department A should not consider the prior hiring history of the department, even as part of the context in which the post has been created. In fact, the university's 209 narrative may lead Department A believe they are enjoined from doing more, and allows the department to ignore the effects of a pattern of behavior that could potentially be shown to be discriminatory against historically underrepresented minority applicants. No system exists for monitoring or reviewing hiring practices for evidence of bias, and departmental actions on the basis of such bias may in fact be justified internally by a slippage between administrative and departmental understandings of the University's obligations under Proposition 209.

Scenario 2 – Outreach

- Department B posts a carefully described position in an important sub-field that includes in the list of desirable qualities someone with a demonstrated history of mentoring graduate students, including those from historically underrepresented minority backgrounds.
- When the faculty meets to discuss a short list, one candidate has recruited and mentored African American graduate students in addition to having significant academic credentials.
- When a faculty member points out this mentoring record, and the potential for increasing the diversity of the graduate program, and suggests that the applicant be considered for the short list, another says that race, ethnicity, and gender cannot be a consideration at this stage of the process.
- The faculty's misinterpretation of the UCSD administration's explanation of Proposition 209 has allowed for the argument against discussing race, ethnicity, and gender to ignore a quality evident in the record of the applicant and mentioned as desirable in the job advertisement.

Scenario 3 – Research

- Department C posts a carefully described position in a sub-field of Native American History that has been identified by the faculty as a top priority. The job description seeks an applicant that uses new and generative approaches to Native American History in teaching and research. The department advertises widely and successfully, assembles a short list, and interviews three strong candidates.
- The faculty meets to discuss the candidates and consider making a job offer. A faculty member argues on behalf of one candidate on the basis of a new methodology she has employed in a book she had written about the historical trajectory of a tribe in which she was an enrolled member. She had developed her methodological techniques through oral interviews and researching the comparative epistemology of tribal historical narratives.
- Another faculty member claims that promoting this candidate “because she is Native American” violates Proposition 209. University officials have said that race and ethnicity should not be a factor in appointments after the recruitment stage. Other faculty members feel that they cannot adequately discuss their appraisal of the candidate after this exchange.
- A blanket prohibition on discussion of race, ethnicity, gender, and other characteristics during the selection phases of the job search creates an atmosphere of outright or subtle intimidation in which the discussion of academic achievements in evidence in the candidate’s CV, and that are identified and sought after in the job description, may be dismissed due to the possible violation of Proposition 209.
- In this case one could argue that, by not considering the full qualifications of each candidate in relation to the open position, the Native American candidate had suffered discriminatory treatment. The faculty member in favor of offering her the appointment did not argue that she was the best *because* she was Native American, but that her work was the best in relation to the job description in part because of insights that may have been related to her history and experience, as evidenced in her published academic work. Ignoring qualifications documented in her CV *because* she is Native American is an example of discrimination, not preference.

UCSD (and UC) training of faculty regarding the workings of Proposition 209 in relation to faculty job searches cannot stop with maximizing the effectiveness of recruitment and the expansion of the pool to improve faculty diversity. This approach during the subsequent selection process can cover for, and help to enable, discriminatory practices which prevent

harnessing a growing availability pool of historically underrepresented minority Ph.D.s to diversify university faculty.

Ross Frank
Associate Professor
Department of Ethnic Studies, UCSD