

# California Association of Scholars

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144 Bay Heights, Soquel CA 95073-3026 • (831) 476-1144

June 17, 2010

California State Senate  
Education Committee  
Senator Gloria Romero, Chair

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Via facsimile: 916-445-7799

RE: Oppose AB 2047

Dear Chair Romero,

I write on behalf of the California Association of Scholars concerning AB2047, which, according to the analysis prepared by the Legislative Counsel, "...would authorize the University of California and the California State University, until January 1, 2020, to consider race, gender, ethnicity, national origin, geographic origin, and household income, along with other relevant factors, in undergraduate and graduate admissions, so long as no preference is given, if and when the university, campus, college, school, or program is attempting to obtain educational benefit through the recruitment of a multifaceted, diverse student body."

As you know, the California Constitution contains a provision that flatly prohibits any form of discrimination or preferential treatment based on race or sex. That provision has been tested in court many times, and it has always prevailed. In *Grutter v. Bollinger*, the US Supreme Court held that the US Constitution permits diversity to be a consideration in admissions, but as you also know, that does not preempt state prohibitions such as those of California's constitution: *Grutter* permits but does not require, and so an explicit state prohibition takes precedence. Mention of *Grutter* in AB2047 is thus at best irrelevant. Its inclusion can have only one purpose: to deceive, by hinting that *Grutter* permits racial preferences in California, which it most certainly does not.

AB2047 as written invites UC and CSU to break the law. It does so by telling them that considering race in admissions is not the same thing as granting a preference. But as we all know perfectly well, considering race in admissions is the same thing as granting a preference. The bill pretends there is a distinction where none exists and it invites UC and CSU to pretend that they are not violating proposition 209 when that is what they would be doing.

"For Reasoned Scholarship in a Free Society"

*An Affiliate of the National Association of Scholars*

The legal situation is beyond any question: 209's prohibition on preferences is not trumped by the Grutter decision, and nobody thinks that it is. If 209 did not exist, Grutter would still not require preferences: it only permits them where they are not forbidden by law, as they are in California. It is also beyond any doubt that if considering race in the admission process results in any individual getting admitted who would not otherwise have been admitted, that is an illegal preference. This proposed law therefore can not possibly achieve anything—apart from encouraging individuals who have a poor understanding of the law to break it, thus clogging our courts with completely unnecessary suits to restrain them when they do so.

We therefore ask you to ask yourselves: is there even one good reason to vote for this bill? It may signal to others that you are in the right camp with respect to preferences. But is that a sufficient reason? It may protect you from criticism on the part of these who favor preferences. Is that a good reason? It may make you feel good about your own benevolent intentions. Is that a good reason? Surely, none of these are defensible reasons, yet they are the only possible reasons why anyone might vote for this bill. If you pass it, you will only have wasted the time and effort of many people all across this state. Nothing else will have been achieved.

You and your colleagues write the laws for this state. It would be particularly irresponsible for legislators, of all people, to encourage contempt for state law by passing a bill that positively encourages law-breaking. Moreover, the citizens of this state have a right to expect that their legislature will show a decent respect for what the people of California did when they passed proposition 209 by a large margin.

We urge you to vote down this mischievous scofflaw bill.

Sincerely,

John M Ellis, President  
California Association of Scholars  
[Johnellis2608@att.net](mailto:Johnellis2608@att.net)

cc Chair Gloria Romero  
Vice-Chair Robert Huff  
Senator Elaine Alquist  
Senator Bill Emmerson  
Senator Loni Hancock  
Senator Carol Liu  
Seantor Curren Price  
Senator Joe Simitian  
Senator Mark Wyland