

Will Voters Jump on the Politicians' Diversity Bandwagon?

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Body

Oct 07, 2020(Fox Hounds: <http://www.foxandhoundsdaily.com/Delivered by Newstex>) This coming election will indicate whether the governor and California legislature are way out in front of the electorate on a high-profile issue of the moment diversity in the form of affirmative action. Recently, Governor Newsom signed AB 979[1] that requires businesses with corporate headquarters in the state to have board members of underrepresented communities defined in the bill as 'an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender.' There must be one director from an unrepresented community if the board has four members or fewer; two directors from these communities if the board size is between five and nine; and three members if the board is larger than nine.

There are monetary penalties for ignoring the mandate. Under previous legislation the state required female representation on boards of directors for corporations headquartered in the state. Whether this is a quota system is not the issue before us here, nor is the legality of the directives. Both the new law dealing with underrepresented communities and the older law dealing with women directors are already being challenged in the courts[2] under the theory that they violate the equal protection clause in the United States Constitution. What is at issue is whether California voters are on board with what appears to be an official state policy to increase diversity. The bills signed by the governor are forms of affirmative action, giving people with defined identifiable traits enhanced opportunities. The governor and the legislature clearly support the idea of a state diversity policy not only exemplified by the bills mentioned above, but the legislature's action to place Proposition 16 on the ballot repealing 1996's Proposition 209, which banned consideration of race, sex, color, ethnicity, or national origin in public employment, public education, and public contracting in California. But two recent statewide polls find Proposition 16 underwater. The Public Policy Institute of California found 31% support for removing the affirmative action ban, 47% opposed and 22% undecided. The Institute of Governmental Studies UC Berkeley poll found similar numbers with 33% supporting Prop 16, 41% opposed and 26% undecided. The undecided numbers are large. Voters may not have focused on the ballot measures at the time the polls were taken. The yes side of Proposition 16 has the majority of the money to campaign. Still, ballot measures that start off with polling numbers well below the 50%-plus-one winning margin rarely recover. Which begs the question are the governor and legislators leading a parade with few followers? Are they representing well California voters? This is not to say that Californians are against diversity. They can support it, but they also can oppose the idea of the state mandating how they should live. Taking the voters' attitudes into consideration when making laws is not always a consideration for politicians. That was brought home clearly in the governor's case when he signed an executive order to ban the death penalty during his term in office despite voters backing the death penalty while defeating a move to abolish the death penalty in a recent election. If voters do turn down Proposition 16, what might that mean to the new laws affecting corporate boards? Perhaps, little legally the courts will decide, but the November election will tell us if we have political leaders who don't always respect the

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public's view. [1]: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB979 [2]: <https://apnews.com/article/race-and-ethnicity-los-angeles-legislation-california-gavin-newsom-4b1b76e9d49c34a7fa88d68c4330ef48>

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