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COALITION FOR ECONOMIC EQUITY V WILSON

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I. FACTS

In 1996 California voters passed Proposition 209, the California Civil Rights Initiative, as an amendment to the state's Constitution.[2] Essentially, the passage of Proposition 209 did away with all public race and gender-based affirmative action programs in California.[3] After Proposition 209 passed, the plaintiffs, representing racial minorities and women, filed a complaint in U.S. District Court against state officials and political subdivisions.[4] The plaintiffs alleged that Proposition 209, first, violated the equal protection clause of the Fourteenth Amendment, and second, was void under the Supremacy Clause for conflicting with Titles VI and VII of the Civil Rights Act of 1964, and Title IX of the Educational Amendments of 1972.[5] The plaintiffs asked the District Court to declare Proposition 209 unconstitutional and issue a permanent injunction enjoining the State from implementing and enforcing Proposition 209.[6]

Plaintiffs also petitioned for a temporary restraining order (TRO) and a preliminary injunction, both of which were granted by the court. The District Court granted both the TRO and the preliminary injunction.[7] The injunction barred the State from implementation and enforcement of Proposition 209 until a trial or final judgment.[8] Through its fact finding process, the District Court determined that the elimination of race and gender-based affirmative action programs would reduce contract, employment, and educational opportunities for minorities and women.[9] The District Court also found that if the affirmative action programs were to be reinstated, the California Constitution would have to be amended by another initiative.[10] Based on these facts, the District Court concluded that the plaintiffs had shown a likelihood of success on their equal protection claim.[11]

Second, the District Court decided that the plaintiffs had shown a likelihood of success as to their pre-emption claim. The court supported its conclusion by finding that Title VII preempts Proposition 209 under the Supremacy Clause.[12] The District Court determined that Proposition 209 in effect eliminates employer discretion to use race and gender preferences — discretion that, in the District Court's view, Title VII preserves.[13] To the extent that the Proposition banned such preferences, the court held that Title VII pre-empts it under the Supremacy Clause.[14]

The District Court concluded that if the injunction was not imposed, minorities and women would suffer irreparable harm as Proposition 209 immediately would ban existing preference programs in violation of the plaintiff's constitutional rights.[15] In contrast, the State would suffer little harm by waiting to implement Proposition 209.[16] Finally, the District Court also decided that the public interest would be served by granting the preliminary injunction.[17] The court believed that "[p]reserving the pre-election status quo would 'harmonize' the public need for 'clear guidance with respect to Proposition 209' with 'the compelling interest in remedying discrimination that underlies existing constitutionally-permissible state-sponsored affirmative action programs threatened by Proposition 209.'"[18] After the district court granted the plaintiff's TRO and preliminary injunction, the defendants appealed to the Ninth Circuit Court of Appeals.

II. HOLDING

The Ninth Circuit overruled the District Court and the Supreme Court denied certiorari. The Ninth Circuit held that the plaintiffs had not demonstrated a likelihood of success on the merits of their equal protection and supremacy causes of actions, nor that they would face irreparable harm if Proposition 209 was implemented.[19]

III. ANALYSIS/APPLICATION

A court may grant a preliminary injunction "if the movant has shown a likelihood of success on either the merits and the possibility of irreparable injury, or that serious questions are raised and the balance of hardships tip sharply in the movant's favor."[20] The Ninth Circuit

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[1]The United States Supreme Court denied certiorari for this case.

[2]Coalition for Economic Equity v. Wilson, 110 F.3d 1431, 1434 (9th Cir. 1997).

[3]*Coalition for Economic Equity v. Wilson,* 110 F.3d at 1434.

[4]*Id.* at 1435.

[5]*Id.*

[6]*Id.*

[7]*Id.*

[8]*Id.*

[9]*Id.* at 1435.

[10]*Id.*

[11]*Id.*

[12]*Id.* at 1436.

[13]*Id.*

[14]*Id.*

[15]*Id.*

[16]*Id.*

[17]*Id.*

[18]*Id.*

[19]*Id.* at 1438.

[20]*Id.* at 1438, quoting *Armstrong v. Mazurek,* 94 F.3d 566, 567 (1996).

Court of Appeals had to determine whether the District Court abused its discretion in granting the preliminary injunction.[21] "An abuse of discretion occurs if the district court 'bases its decision on an erroneous legal standard or on clearly erroneous findings of fact.'"[22]

The Ninth Circuit Court of Appeals first analyzed the District Court's conclusion that the plaintiffs demonstrated a likelihood of success on their claim that Proposition 209 violates the Equal Protection Clause of the Fourteenth Amendment.[23] The court's equal protection analysis posed two questions. First, whether an erroneous legal premise was used in conventional equal protection analysis, and secondly, whether an erroneous legal premise was used in "political structure" equal protection analysis.[24]

Conventional equal protection analysis looks to the substance of the law at issue.[25] The Court of Appeals ultimately found that Proposition 209 is constitutional as a matter of conventional equal protection.[26] Because Proposition 209 prohibits the government from discriminating against or giving preferential treatment to any person on account of race or gender, Proposition 209 is necessarily constitutional.[27] Plaintiffs contended that racial groups and women would be denied equal protection because Proposition 209 would deny them preferential treatment — treatment intended to place them on equal footing with non-minorities.[28] The Court of Appeals disagreed, relying on the fundamental notion that the Constitution prohibits the government from classifying individuals by race or gender, unless the classification satisfies the exacting judicial scrutiny of the court.[29] Because Proposition 209 prohibits the government from classifying individuals based on race or gender, as opposed to allowing for the classification of individuals by race or gender,[30] it could not be found to violate the Equal Protection Clause of the United States Constitution under conventional equal protection analysis.[31]

The Court of Appeals next examined the political structure analysis of the Equal Protection Clause, an analysis that "looks to the level of government at which the law was enacted."[32] The plaintiffs' primary contention, introduced in the District Court and before the Ninth Circuit, was that Proposition 209 imposed an unequal political structure that denied minorities and women preferential treatment at the lowest level of government.[33] The lowest level of government varies depending on which levels of government are compared. For example, the state could be the lowest level of government if compared with the federal government. In this case, the lowest level of government is the municipal government.

The District Court relied on *Hunter v. Erickson,*[34] which held unconstitutional an amendment to the Akron city charter barring the City Council from enacting ordinances pertaining to racial discrimination, unless the Akron voters approved.[35] In *Hunter,* the Supreme Court determined that a compelling state interest did not exist to justify making it more difficult to enact legislation which benefitted racial minorities.[36] Using *Hunter,* the District Court concluded that Proposition 209, like the Akron city charter amendment, placed unique political burdens on racial classifications and gender preferences and that no compelling state interest existed for making them appeal to a state-wide electorate.[37] Before the passage of Proposition 209, minorities and women could petition the local government for preferential treatment.[38] Post Proposition 209, the district court found that minorities and women had to "appeal to the statewide electorate, a 'new and remote level of government,'" to obtain preferential treatment.[39]

The state contended that Proposition 209 did not reallocate political authority in a discriminatory manner and, additionally, that a majority of the electorate can not restructure the political process to discriminate against itself.[40]

The Court of Appeals looked to the Supreme Court's decision in *Crawford v. Board of Education of the City of Los Angeles.*[41] In *Crawford,* the Supreme Court recog-

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[21] *Id.; See also Los Angeles Mem'l Coliseum Comm'n v. National Football League,* 634 F.2d 1197, 1200 (9th Cir. 1980), stating that the level of review for a preliminary injunction is abuse of discretion.

[22] *Id,* quoting *American-Arab Anti-Discrimination Comm. v. Reno,* 70 F.3d 1045, 1062 (9th Cir. 1995).

[23] *Id.* at 1439.

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.* at 1440.

[30] *Id.*

[31] *Id.*

[32] *Id.* at 1439.

[33] *Id.* at 1440.

[34] *Id.* at 1440, citing *Hunter,* 393 U.S. 387.

[35] *Id.*

[36] *Id.*

[37] *Id.* at 1441.

[38] *Id.*

[39] *Id.* citing *Coalition for Economic Equity v. Wilson,* 946 F. Supp. 1480 (N.D. Ca. 1996).

[40] *Id.*

[41] *Crawford v. Board of Education of the City of Los Angeles,* 458 U.S. 527, 532 (1982).

nized an explicit distinction "between state action that discriminates on the basis of race and state action that addresses, in neutral fashion, race-related matters."[42] The Court held that an amendment to the California Constitution was constitutional where the amendment prohibited state courts "from mandating pupil assignment or transportation except to remedy a specific equal protection violation."[43] The Ninth Circuit Court of Appeals gave great consideration to the Supreme Court's decision in Crawford that "the simple repeal or modification of desegregation or antidiscrimination laws, without more, never has been viewed as embodying a presumptively invalid racial classification."[44] In light of *Crawford,* the Court of Appeals ultimately concluded that the *Hunter* doctrine did not apply because there was not a discriminatory reallocation of political authority in the case before the court.[45] The Ninth Circuit held that a state may create a law that involves race and gender related issues in a neutral fashion,[46] and that political processes may be restructured, so long as an individual's right to equal protection is not denied, i.e. the individual's right to equal treatment is not burdened.[47]

If plaintiffs want to prove that a change in political structure would deny equal protection, they must show that individuals would be treated unequally if the change occurred.[48] The Court of Appeals held that plaintiffs were really claiming that Proposition 209 would prevent them from receiving preferential treatment.[49] However,"[i]mpediments to equal protection do not [always] deny equal protection."[50] Furthermore, the Ninth Circuit Court of Appeals concluded that Proposition 209 placed the same "equal protection" burdens on individuals seeking race and gender preferences as does the Constitution.[51] In other words, Proposition 209 is consistent with the Constitution; both the Constitution and Proposition 209 want all citizens to be treated equally. Racial preferences are unconstitutional unless there is some compelling circumstance.[52]

While the Constitution does not require a state to have narrowly tailored racial preferences, a state may if there is a compelling state interest.[53] "The Fourteenth Amendment . . . does not require what it barely permits."[54] With this in mind, the Court of appeals determined that the District Court relied on an erroneous legal premise in finding that the plaintiffs showed a likelihood of success on their equal protection claim.[55]

The Court of Appeals next applied the erroneous legal premise standard to the District Court's finding of a likelihood of success with the preemption claim. The court turned to the 1964 Civil Rights Act and noted that state laws will only be preempted if they are in actual conflict with federal law.[56] The court, relying on the fact that the plain language of Title VII does not require states to give preferential treatment of minorities or women, concluded that Proposition 209 was consistent with the 1964 Civil Rights Act.[57] The Court of Appeals decided that the District Court also relied on an erroneous legal premise in finding that the plaintiffs would be likely to succeed under their preemption claim.[58]

IV. CONCLUSION

The scenario will become more interesting if the plaintiffs now decide to pursue the case on the merits. If the substance of Proposition 209 is upheld by the Supreme Court, the law of Proposition 209 and *Regents of the University of California v. Bakke*[59] will conflict. This case is important because plaintiffs now must decide whether or not to pursue their claim. If the plaintiffs believe that a case on the merits would render the same decision, they may decide not to go forward.

Summary and Analysis Prepared by:
Wyndall A. Ivey

[42] *Crawford,* 458 U.S. at 538.
[43] *Coalition for Economic Equity,* 110 F.3d at 1443.
[44] *Id.* quoting *Crawford,* 458 U.S. at 439.
[45] *Id.* at 1443.
[46] *Id.* at 1444.
[47] *Id.* at 1445.
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.* at 1446.
[54] *Id.*
[55] *Id.*
[56] *Id.* at 1447.
[57] *Id.*
[58] *Id.* at 1448.
[59] *Regents of the University of California v. Bakke,* 438 U.S. 265 (1978), holding that race may be taken into account in admission programs.