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other aspect as legal entitlement; those issues could be neither identified nor addressed under the RPI.

In addition, the public cares about the quality in education; the RPI stands in the way of that goal. Health and environmental factors have been greatly aided through analysis of racial and ethnic data -- -- as Jews, African Americans, Asians, Caucasians, and other ethnic groups have been proven to have highly correlative exposure to certain diseases and environmental risks; the RPI would halt analysis of those issues. Thus, it is beyond peradventure the resolution deals with a matter of substantial importance to the Bar and the public view.

**B. THE EVENTS GIVING RISE TO THE RESOLUTION OCCURRED AT A TIME WHICH EFFECTIVELY PRECLUDED THE BAR ASSOCIATION FROM FILING IT TWO MONTHS IN ADVANCE OF THE CONFERENCE.** It was only in late July 2003 that the RPI qualified for placement on the October 2003 ballot; that timing has made it critical for this Conference to address this matter at its September 2003 session. Moreover, the short time frame prior to the election means that the public will be deprived of the opportunity to rationally evaluate this proposition; the assistance of the Bar would be greatly significant in that analysis. Third, the American Bar Association House of Delegates voted (without opposition) to oppose the RPI, and to urge local and state bar associations to do so as well; that action only occurred on August 12, 2003. All of those factors precluded the filing of this resolution more than two months in advance of the conference.

**C. THE RESOLUTION WAS PRESENTED FOR FILING AS SOON AS REASONABLY POSSIBLE AFTER THE OCCURRENCE OF THE EVENTS SET FORTH IN PARAGRAPH B, ABOVE.** It has been less than three weeks since the American Bar Association called upon state and local bar associations to oppose the RPI. It has been approximately one month since the RPI qualified for the October 7 ballot. Thus, the resolution was presented for filing as soon as reasonably possible after the occurrence of those events.

D. The subject matter for resolution will not be before the Conference at the upcoming September meeting unless the resolution is filed.

E. There is no indication that consideration of this proposition will restrict the time for consideration of any other matter nor is there any other matter appearing

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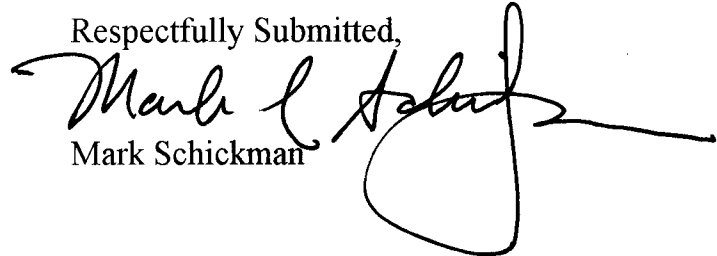
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on the Conference's agenda which is of greater importance than the resolution being presented.

F. The resolution is accompanied by the Statement of Mission appearing on the official website of Proposition 54, [www.racialprivacy.org](http://www.racialprivacy.org). Moreover, the resolution has been submitted to all delegations attending the Conference, inviting counter argument.

For all of the reasons stated above, proponent Bar Association of San Francisco respectfully requests that this emergency late-filed resolution be accepted by the Executive Committee for presentation at the 2003 Conference.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Mark Schickman", with a large, stylized flourish extending to the right.

Mark Schickman

MS/jr  
Enclosures

cc: Scott McMillan  
Jeff Bleich

OPPOSITION TO PROPOSITION 54, "RACIAL PRIVACY INITIATIVE"

**RESOLVED** that the Conference of Delegates of California Bar Associations opposes Proposition 54, the "Racial Privacy Initiative (RPI);" and urges other bar organizations and associations to join in opposing the Racial Privacy Initiative, which will appear on the statewide California ballot on October 7, 2003, and which would largely prohibit any California public entity (including schools, employers, or law enforcement agencies) from collecting or sorting any data on the basis of race or ethnicity, and

**RESOLVED FURTHER**, that the Conference of Delegates of California Bar Associations urges state, local, and specialty bar associations to engage in educational programs for the electorate, the media and other organizations to inform those groups about the compelling reasons to collect and analyze ethnic and racial data. and the deficiencies of the Racial Privacy Initiative , which reads as follows:

**Prohibition Against Classifying by Race by State and Other Public Entities**

Section 32 is added to Article I of the California Constitution as follows:

Sec. 32(a) The state shall not classify any individual by race, ethnicity, color or national origin in the operation of public education, public contracting or public employment.

(b) The state shall not classify any individual by race, ethnicity, color or national origin in the operation of any other state operations, unless the legislature specifically determines that said classification serves a compelling state interest and approves said classification by a 2/3 majority in both houses of the legislature, and said classification is subsequently approved by the governor.

(c) For purposes of this section, "classifying" by race, ethnicity, color or national origin shall be defined as the act of separating, sorting or organizing by race, ethnicity, color or national origin including, but not limited to, inquiring, profiling, or collecting such data on government forms.

(d) For purposes of subsection (a), "individual" refers to current or prospective students, contractors or employees. For purposes of subsection (b), "individual" refers to persons subject to the state operations referred to in subsection (b).

(e) The Department of Fair Employment and Housing (DFEH) shall be exempt from this section with respect to DFEHconducted classifications in place as of March 5, 2002.

(1) Unless specifically extended by the legislature, this exemption shall expire ten years after the effective date of this measure.

(2) Notwithstanding DFEH's exemption from this section, DFEH shall not impute a race, color, ethnicity or national origin to any individual.

(f) Otherwise lawful classification of medical research subjects and patients shall be exempt from this section.

(g) Nothing in this section shall prevent law enforcement officers, while carrying out their law enforcement duties, from describing particular persons in otherwise lawful ways. Neither the governor, the legislature nor any statewide agency shall require law enforcement officers to maintain records that track individuals on the basis of said classifications, nor shall the governor, the legislature or any statewide agency withhold funding to law enforcement agencies on the basis of the failure to maintain such records.

(h) Otherwise lawful assignment of prisoners and undercover law enforcement officers shall be exempt from this section.

(i) Nothing in this section shall be interpreted as prohibiting action which must be taken to comply with federal law, or establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the state.

(j) Nothing in this section shall be interpreted as invalidating any valid consent decree or court order which is in force as of the effective date of this section.

(k) For the purposes of this section, "state" shall include, but not necessarily be limited to, the state itself, any city, county, city and county, public university system, including the University of California, California State University, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the state.

(l) This section shall become effective January 1, 2005.

(m) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS:

Existing Law: Permits collection of racial/ethnic data regarding topics including hate crimes, diversity in the bar and bench, employment and housing discrimination, public school resources and performance, equal access to justice, and health and environmental factors.

This Resolution: Opposes the RPI, thereby maintaining the *status quo*, permitting collection of racial/ethnic data for legitimate public purposes.

The Problem: State agencies charged with ensuring equality in housing and employment, combating hate crimes, etc., routinely collect and analyze racial/ethnic data. Schools and doctors track such data to identify and remedy problems among certain populations.

Lawyers have a particular interest in such data, supporting the administration of justice. Justice can only be achieved by eliminating artificial barriers to people of color who wish to become law students, attorneys, judges and other legal professionals. Under the RPI, probative data could be collected and analyzed neither by the State Bar, nor the courts. Similarly, the RPI would halt monitoring the role of race/ethnicity in criminal convictions or sentencing, absent the politically impossible burden of the concurrence of the Governor and a supermajority of both the Senate and Assembly.

According to the National Institute of Health, race and ethnicity are major factors in many medical conditions. Though the RPI contains an exemption for “medical research subjects and patients,” those populations are a tiny fraction of the people for whom important racial/ethnic data is maintained by the medical community, according to the Public Health Institute. Ethnic data uncovered the link between Tay-Sachs and Eastern European Jews, sickle cell anemia and African Americans, breast cancer and white women. According to the medical community, the RPI would significantly hamper such breakthroughs.

Organizations combating hate crimes violate the RPI, tracking and sorting the race/ethnicity of victims. California’s Department of Fair Employment and Housing (“DFEH”) collects and analyzes data on workforce race and ethnicity, as an important tool in finding and eradicating employment and housing discrimination. The RPI artificially freezes the DFEH’s statistical scope as of 3/05/2002 (making it stale and unreliable) and eliminates it altogether after ten years. The effort to recognize and combat discrimination depends upon the precise data which the RPI bans. Local governments would be prevented from testing for race- or ethnicity-based discrimination in housing markets, since testing requires collecting and sorting information by race or ethnicity. The RPI doesn’t prevent discrimination -- -- only hides its existence and clouds its remedies. It erases 50 years of jurisprudential effort against discrimination.

There remains a pressing need to collect and analyze racial/ethnic data to combat racial profiling, hate crimes, employment and housing discrimination, and discrepancies in educational and environmental resources. They are critical to the advance of medical science. It is foolhardy to pretend that statistical data is unimportant in identifying such problems and crafting proper solutions.

Finally, the legal discipline is based upon gathering and analyzing probative evidence to identify and solve problems; the RPI’s goal is to suppress such evidence, to mask problems. We should join the American Bar Association in opposing the RPI.

#### IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

AUTHOR, PERMANENT CONTACT AND RESPONSIBLE FLOOR DELEGATE:

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## **CounterArgument to Resolution (From [www.racialprivacy.org](http://www.racialprivacy.org))**

### **Racial Privacy Initiative's MISSION STATEMENT**

Passage of RPI will do many things: save our state budget over \$10 million, end government's preferential treatment based on race, and junk a 17th-century racial classification system that has no place in 21st-century America. But most importantly, RPI's passage will signal America's first step towards a color-blind society.

The California Constitution forbids state government from discriminating against or granting preferential treatment to any citizen based on race. Therefore, since government has no reason to classify persons by race, why should it even ask us for the data? Like religion, marital status or sexual orientation, race should become a private matter that is no business of government's. Think how refreshing it would be to throw out the entire system of checking little boxes.

As the most ethnically diverse state in the Union, California has the most to gain by compelling its government to treat all citizens equally and without regard to race. The latest U.S. Census divides Americans into a whopping 126 different ethnic/racial categories. How many categories should Californians put up with?

#### **SOME OF OUR ENDORSERS:**

Shelby Steele  
George Will  
Thomas Sowell  
Walter Williams  
Ward Connerly