

**Proposition 209 and the Decline of Women
in the Construction Trades**

**Produced by
The Discrimination Research Center
&
Equal Rights Advocates**

June 2004

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Special thanks to our interviewees.

This report was made possible by generous grant support from the Levi Strauss Foundation, the Ford Foundation, the VanLobenSels/RembeRock Foundation, and the Evelyn and Walter Haas, Jr., Fund.

EXECUTIVE SUMMARY

In 1996, when California passed Proposition 209 to end affirmative action programs in hiring, public college and university admissions, and contracting, many predicted that hard-fought gains for equal job opportunities for women and people of color would be jeopardized. They were correct.

In this study, the Discrimination Research Center (DRC) and Equal Rights Advocates (ERA) have examined the history of women in the construction industry, where the number of tradeswomen has been extremely low due to discriminatory hiring and recruiting and a male-dominated culture. This report evaluates data sets produced by local, state and federal labor agencies and the Bureau of the Census for a quantitative analysis of women's participation in the construction trades. This study also provides a qualitative analysis through the expertise and insights gained from interviews of workers and leaders in the trades, community advocates and government officials.

Affirmative action requirements had begun to open the construction industry to carpenters, plumbers, electricians and other tradeswomen. After the passage of Proposition 209, the number of women in the construction trades declined, and in many cases the trend toward increasing representation of women has been reversed. Although the total number of available jobs in California's construction industry has increased, these jobs have gone almost entirely to men. Since 1995, the number of men employed in California's construction industry has increased by 23.7%, while the number of women employed in this industry has held relatively constant.

Women's participation in apprenticeship programs, where the future workers of the industry are trained, has undergone its steepest decreases since the prohibition of affirmative action in 1996. Given these lower numbers of women in the pipeline, gender disparities in California construction will only get worse in the absence of affirmative action.

DRC and ERA, based upon this research and testimony from people knowledgeable about the construction industry, from tradeswomen and tradeswomen advocates to government officials and employers, recommend steps that should be taken to improve women's representation in these well-paid jobs such as increased recruitment,

increased support of women apprentices, increased retention, and increased government oversight and enforcement of contractual obligations. Even if all of these reforms are put into place, however, unless Proposition 209 is repealed, women will still find the construction industry's gate closed to them.

INTRODUCTION

American legal history maps a series of ideological and legal struggles to expand liberty and increase opportunities for groups who have been purposely and systematically excluded from institutions in American society. Although significant gains have been made, unmet challenges remain. For example, when labor force participation among women increased following the enactment of civil rights laws and affirmative action policies, women who struggled for inclusion in the male-dominated labor force celebrated a huge victory. On the sidelines, women seeking work in nontraditional¹ industries watched as millions of other women entered white-collar positions; the expanding opportunities of the 1960s and 1970s only marginally affected their blue-collar workplaces.

Even though the civil rights laws of the 1960s and 1970s did not translate into significant gains for women in blue-collar industries, affirmative action laws and policies have benefited women seeking nontraditional employment. The percentage of women in the construction trades tripled from 1980 to 1996, yet they still accounted for only 2.6% of the construction workforce.²

Women in blue-collar industries often face such strong resistance that regardless of their skills or experience, only the law will force employers to hire them. Many tradeswomen can tell of at least one employer who hired them only because they were forced to by law.

When California passed Proposition 209 in 1996, blue-collar women were forced to take a step backward on the road to equality. Proposition 209 banned, among other things, affirmative action efforts required of recipients of state-funded contracts, including construction contracts. Thus, it took away one of the few means for women to gain access to high-paying jobs in the construction industry.

¹ Nontraditional occupations are those in which women comprise 25 percent or less of the total number of individuals employed. Male-dominated industries tend to pay more than industries that have always employed large numbers of women; therefore, exclusion from these industries has been harmful to women seeking better-paying jobs.

² *Keeping the Door Open: Why Women Should Support Affirmative Action* (Equal Rights Advocates, San Francisco, CA), 1996.

WOMEN IN CONSTRUCTION 1940 – PRESENT

Women entered the labor force en masse during the 1940s to fill the predominantly blue-collar vacancies left by men who joined the military during World War II. From 1940 to 1945, the number of women in the labor force increased nearly thirty-two percent.³ This surge in women's employment was fueled by a government public relations campaign encouraging women to support the war effort by taking jobs manufacturing much needed machinery and munitions. This one-time period of inclusion was short-lived. Although many women sought to keep their jobs after the war ended, a campaign to "get 'Mom' back in the home" resulted in a sharp decline in the number of women working outside the home.⁴ By the 1970s, only two percent of craft workers⁵ were women.⁶

The women's liberation movement in the 1970s reopened some doors, allowing women to enter the white-collar workforce in significant numbers. However, women who sought blue-collar jobs saw virtually no change in entrenched patterns of exclusion.⁷ Professor Elvia Arriola explains this disconnect in the context of the development of the sexual harassment doctrine. According to Arriola, sexual harassment laws developed within the framework of the predominantly white, middle-class women's movement and therefore did not address the unique issues of women entering blue-collar industries.⁸ Harsh and pervasive sexual harassment on construction jobsites has devastating effects for tradeswomen rendering most unable to advance as quickly as male counterparts because of intimidation and unequal treatment. Other sexual harassment victims are forced to leave their jobs or even the construction industry.⁹ Because gender discrimination laws did not recognize many of the factors unique to women in

³ Elvia R. Arriola, "What's the Big Deal?" *Women in the New York City Construction Industry and Sexual Harassment Law, 1970-1985*, 22 COLUM. HUM. RTS. L. REV. 21, 33 n.34 (1990).

⁴ *Id.* at 33.

⁵ The term "craft" is more general than the term "trade." A craft worker works in an occupation or trade requiring manual dexterity or skilled artistry. While skilled tradespeople are crafts workers, the terms "craft" and "craft worker" encompasses the trades as well as other kinds of occupations. Later in the report, when the term "craft" is used, it means a skilled trade.

⁶ *Id.*

⁷ *Id.* at 29.

⁸ *Id.*

⁹ *Id.* at 65.

nontraditional industries, where sexual harassment is more pervasive, many of these women were left with less legal support.¹⁰ In sum, women in white-collar occupations made huge gains during and after the women's rights movement, but the anti-discrimination laws and policies that women fought very hard for did not necessarily facilitate tradeswomen's entry into the construction industry.

One very attractive aspect of construction jobs is that they offer some of the most lucrative entry-level salaries for new employees. Women entering nontraditional jobs, such as those in construction, tend to make twenty to thirty percent more than their counterparts in female-dominated industries.¹¹ Where construction jobs are unionized, they often offer medical coverage, generous leave allowances, and retirement plans. Union members also benefit from grievance procedures and seniority policies that help protect them from arbitrary dismissal. Finally, some women simply enjoy physical work.

Construction work also provides new employees a living wage while they learn invaluable skills during their apprenticeship. At regular intervals apprentices' wages increase and upon completion of their apprenticeship, they achieve journeyman status. As experienced journeymen, they may choose to pursue entrepreneurship or management positions, or they may become governmental inspectors over their respective crafts.

Although the construction industry offers a wealth of opportunities, it can be very difficult to enter because it is "diverse, dispersed, detached, and discontinuous":

diverse in the numerous and highly specialized nature of subcontracting units, dispersed because of uneven distribution of consumer demand and location of construction firms, detached because of the moving nature of the work from site-to-site and job-to-job, and discontinuous due to the seasonal and annual fluctuations of contracting and work opportunities.¹²

¹⁰ *Id.* at 29.

¹¹ Cynthia Negrey et al., *Job Training Under Welfare Reform: Opportunities for and Obstacles to Economic Self-Sufficiency Among Low-Income Women*, 7 GEO. J. ON POVERTY L. & POL'Y 347, 353 (Summer 2000). The gap between female-dominated and nontraditional occupations is often much wider. In 2002, Oakland, California, electricians earned a mean hourly wage of \$31.18. Office clerks in the same city earned \$13.77 per hour. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, 2002 METROPOLITAN AREA OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES, OAKLAND, CA PMSA, available at http://www.bls.gov/oes/2002/oes_5775.htm#b47-0000 (last modified Dec. 1, 2003).

¹² *Intervention Strategies for Capturing Jobs Generated by the Construction Industry in Alameda and San Francisco Counties* (The National Economic Development & Law Center, Oakland, CA), April 1994, at 6.

Because these problems are endemic to construction work, many trade unions responded by positioning themselves as the central clearinghouse for all information concerning job locations, job openings, and job training. Unions then adopted restrictive entrance procedures to ensure that their traditional membership—almost exclusively white men—had access to these difficult to attain jobs.¹³ Some of the remnants of those restrictive policies still exist today. For instance, some unions have arduous and exclusionary entrance procedures that may include difficult testing;¹⁴ up-front fees for tools, clothing, and transportation;¹⁵ secretive or limited application acceptance dates;¹⁶ or requirements that the applicant work a number of hours for an industry employer as a prerequisite for applying.¹⁷ Therefore men of color¹⁸ and women, perceived as outsiders, have historically found it difficult to break into this industry.¹⁹

In the 1960s and 1970s, civil rights laws and government affirmative action programs gave some historically excluded groups more access to construction jobs. One of these laws, Title VII of the Civil Rights Act of 1964, prohibits employers from discriminating on the basis of “race, color, religion, sex, or national origin.”²⁰ Title VII also prohibits sexual harassment and requires that employers maintain workplaces free of sexual harassment. Executive Order 11246 requires that employers make good faith efforts to ensure that women work a specified percentage of the total hours worked on

¹³ *Id.* Many contractors have agreed, either through collective bargaining or informal agreements, to hire only union referrals; therefore, union membership is often a requirement for getting a job.

¹⁴ Testing often places groups that were previously excluded from the trades at a disadvantage because they are often unfamiliar with the common terminology used in the industry and their test answers are often deemed “less satisfactory.” *Id.* at 55.

¹⁵ *Id.* at 6.

¹⁶ Many times, apprenticeship opening dates are communicated through informal networks. Because many women are not aware of or are excluded from these networks, they are often unaware of openings. *Id.* at 52.

¹⁷ *See, e.g.,* *Eldredge v. Carpenters 46 N. Cal. Counties Joint Apprenticeship & Training Comm.*, 94 F.3d 1366, 1367-68 (9th Cir. 1996).

¹⁸ In the past twenty to thirty years, affirmative action policies have resulted in huge gains for men of color in the construction industry, while tradeswomen have benefited much less from these laws. *See, e.g.,* Arriola, *supra* note 3, at 50.

¹⁹ Until the mid-1960s, nepotism in the construction industry even excluded many white men. Skills and union membership were passed from father to son. Louis Baczewski, *International Brotherhood of Electrical Workers Local 309 and the Fate of American Construction Trade Unions, 1965-2002* (Fall 2001), available at

http://www.ibewninthdistrict.org/ORGANIZING/IBEW_309_and_the_Fate_of_Unions.pdf.

²⁰ 42 U.S.C. § 2000e.

federally funded projects.²¹ The U.S. Department of Labor, and many other federal, state, and local government agencies also adopted affirmative action and anti-discrimination policies during this time.

These laws have increased opportunities in the construction industry for men of color, yet tradeswomen have seen little change. Women still find the industry extremely hostile and exclusionary.²² Sexual harassment, for instance, while often unreported due to fears of retaliation, remains particularly acute in the construction industry. Many tradeswomen report to advocates that they have endured intimidating and brutal harassment.²³ To make matters worse, lack of enforcement makes it easier for contractors and unions to ignore anti-discrimination laws and affirmative action mandates. In recent years, the overt discrimination that has virtually disappeared from most workplaces persists in construction. It is not surprising, given these barriers, that despite more than forty years since the initial wave of civil rights legislation, less than three percent of construction workers are women.

Notwithstanding the frustrating struggle women have endured trying to enter and remain in construction, affirmative action programs, even when not uniformly enforced, have provided some opportunities. As Molly Martin, an electrician and tradeswomen advocate, wrote, “[w]ithout affirmative action, we will lose access to these jobs for which we’ve fought so hard and which hold the key to the door out of poverty for many poor and working-class women.”²⁴

²¹ Nondiscrimination in Government Employment Equal Employment Opportunity, EX. ORDER NO. 11246, 30 Fed. Reg. 12319 (September 24, 1965).

²² A 1991 survey of female apprentices and journeymen by the Joint Committee of the California Apprenticeship Council Standing Committee On Equal Opportunity In Apprenticeship and The Chief’s Advisory Committee on Women In Apprenticeship found that, more than any other variable, employers’ resistance to hiring women explains the low numbers of female apprentices. When asked if they had experienced hostility from other workers, 64.3% answered in the affirmative, only 9.1% reported that they had experienced no hostility. Significant numbers (31.5%) reported that they received fewer jobs than men and 23.1 % encountered resistance from contractors when they were dispatched to a jobsite. Joint Committee of the California Apprenticeship Council Standing Committee On Equal Opportunity In Apprenticeship and The Chief’s Advisory Committee on Women In Apprenticeship, *Female Apprentices and Journeywomen Survey Summary* (1991) (on file with the Equal Rights Advocates).

²³ Sylvia Law, ‘Girls Can’t be Plumbers’—Affirmative Action for Women in Construction: Beyond Goals and Quotas, 24 HARV. C.R.-C.L. L. REV. 45, 51 (1989).

²⁴ MOLLY MARTIN, HARD-HATTED WOMEN 8-9 (Molly Martin ed., Seal Press, reprint 1997) (1988).

AFFIRMATIVE ACTION AND PROPOSITION 209

Affirmative action is a race or sex-conscious policy or law that seeks to redress past discrimination, secure equal opportunity, or achieve integration.²⁵ In 1961, President Kennedy signed the first official affirmative action program into law. Executive Order 10925 instructed federal contractors to take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, creed, color, or national origin.²⁶ President Johnson's Executive Order 11246, as amended in 1967, extended affirmative action to women for the first time.²⁷ Specific actions, outlined in the Executive Order, include upgrades, transfers, recruitment, compensation, and training.²⁸ In 1978, after considerable pressure from women's rights groups, goals and timetables for the employment of women in construction were finally promulgated.²⁹

In the 1970s, the state of California embarked upon a campaign to address racial and gender disparities in employment, education, and contracting.³⁰ The result was a series of affirmative action laws requiring state agencies to implement new programs to promote equal opportunity. Government Code Sec. 19797, for instance, required state agencies to:

develop, update annually, and implement an affirmative action plan which shall at least identify the areas of underutilization of minorities and women within each department by job category and level, contain an equal employment opportunity analysis of all job categories and levels within the hiring jurisdiction, and include an

²⁵ Law, *supra* note 23, at 58.

²⁶ Establishing the President's Committee on Equal Employment Opportunity March 6, 1961, EX. ORDER NO. 10925, 26 FR 1977 (superseded by EX. ORDER NO. 11246 (1965)).

²⁷ Nondiscrimination in Government Employment Equal Employment Opportunity, EX. ORDER NO. 11246, 30 Fed. Reg. 12319 (September 24, 1965).

²⁸ *Id.* at § 202 (1).

²⁹ Law, *supra* note 23, at n.40. In 1976, tradeswomen advocacy groups filed two lawsuits to compel the Secretary of Labor to issue the requisite guidelines for the employment of women in construction. *Id.*

³⁰ John T. Knox, Speaker Pro Tem (Retired) California Assembly in *Reaching for the Dream, Profiles in Affirmative Action: The Programs and the People Whose Lives They Change* (by a consortium of Bay Area civil rights organizations, including the American Civil Liberties Union and Equal Rights Advocates, Washington, D.C.) (1998), available at www.aclu-sc.org.

explanation and specific actions for improving the representation of minorities and women.³¹

Local government agencies followed suit, adopting their own affirmative action policies.

These federal, state, and local affirmative action programs reached the construction industry in many forms. Regulations implementing Executive Order 11246 mandate that contractors receiving federal funds make good faith efforts to have women work 6.9% of the total hours on their jobs.³² The Department of Labor requires apprenticeship programs to adopt affirmative action plans to ensure fair hiring of women.³³ Many state and local agencies also have affirmative action programs. Finally, an entity may be forced to implement an affirmative action by court order.³⁴

Pressure from the community, government compliance officials, or the threat of litigation to comply with affirmative action programs often fractures the construction industry's steely resolve to exclude women. Indeed, the hostility most women have experienced during the recruitment and hiring process indicates that they were hired reluctantly and only because of the contractor's need to meet legal requirements. For example, when Debra Tudor, an elevator worker with 12 years of experience, interviewed for a job to help build San Francisco's Moscone Convention Center she was told, "We have to hire a woman, can you read a tape measure?"³⁵ In her interview for a job in the elevator trades, Jennifer Stafford was asked, "Can you identify tools?" and "Are you afraid of heights?"³⁶ These questions convinced Tudor and Stafford that, but for affirmative action requirements, they would not have been hired.³⁷

Affirmative action programs have been especially effective when combined with community pressure. In a study published in *Feminist Economics*, tradeswoman Vivian

³¹ Affirmative action plan in each agency and department; development, updating and implementation, CAL. GOV'T CODE § 19797 (invalidated by *Connerly v. State Personnel Bd.*, 92 Cal.App.4th 16 (2001)).

³² OFFICE OF FEDERAL CONTRACT COMPLIANCE, UNITED STATES DEPARTMENT OF LABOR, Facts on Executive Order 11246 – Affirmative Action *available at* <http://www.dol.gov/esa/regs/compliance/ofccp/aa.htm> (last modified Jan. 4, 2002).

³³ Equal Employment Opportunity in Apprenticeship and Training, 29 C.F.R. § 30.4 (2004).

³⁴ In *Eldredge v. Carpenters 46 Northern Cal. Counties Joint Apprenticeship & Training Comm.*, the Ninth Circuit held that the appropriate injunctive relief for women applicants who had been adversely affected by a carpentry apprenticeship program's admission procedures was implementation of a system requiring that at least one of every five applicants dispatched from the referral list is a woman. *Supra* note 17.

³⁵ *Supra* note 30, at 21.

³⁶ *Id.*

³⁷ *Id.* at 6-8.

Price describes how this combination helped three construction projects achieve relatively high numbers of women's employment.³⁸ Tradeswomen advocacy groups had varying levels of involvement in these projects. Price's study concluded that community involvement was positively correlated with higher numbers of tradeswomen employed.³⁹ These groups engaged in a range of activities including monitoring pre-apprenticeship programs; attending oversight meetings with union officials, contractors, and apprenticeship coordinators; conducting survival skills classes; subsidizing childcare, union initiation fees, and equipment and transportation costs; organizing media recruitment campaigns; and reporting regularly to courts.⁴⁰ Two of those projects, Los Angeles' Century Freeway and Oakland's Cypress Freeway, met or exceeded federal affirmative action goals.⁴¹ The third, Boston's Central Artery, fell short of federal affirmative action goals but the overall number of woman hours was higher than in the other cities.⁴²

Affirmative action has always faced formidable opposition. In the 1980s, the Reagan Administration sought to repeal Executive Order 11246. According to then-Assistant Attorney General for Civil Rights William Bradford Reynolds, women and people of color fared worse in companies subject to federal affirmative action policies than in employment with companies not subject to compliance guidelines.⁴³ No studies supported those assertions, and, in fact, the results of several extensive studies showed the contrary.⁴⁴ One study by the Office of Federal Contract Compliance Programs examined 77,000 companies and found that, between 1974 and 1980, employment of people of color and women grew much faster in entities subject to federal compliance requirements.

With varying success, affirmative action programs were also challenged in the courts. In 1978, a United States Supreme Court decision that struck down a University of California affirmative action program held that race could be considered as one of a

³⁸ Vivian Price, *Race, Affirmative Action, and Women's Employment in US Highway Construction*, FEMINIST ECONOMICS, July 1, 2002, at 87.

³⁹ *Id.* at 98.

⁴⁰ *Id.* at 97-98.

⁴¹ *Id.* at 96.

⁴² *Id.*

⁴³ Law, *supra* note 23, at 65-66.

⁴⁴ *Id.*, at 66.

number of factors in admissions decisions.⁴⁵ In several other Supreme Court challenges during that time period, affirmative action programs were upheld.⁴⁶

In the late 1980s, less than a decade later, affirmative action challenges that reached the Supreme Court were more successful.⁴⁷ For example, in *City of Richmond v. Croson*, a city affirmative action plan for public contracts was struck down on two bases.⁴⁸ First, the Court held that the city had failed to demonstrate the requisite compelling governmental interest to justify the plan. Second, the Court found that the plan did not meet the standard for racial classifications because it was not narrowly tailored to remedy the effects of past discrimination.

In the mid-1990s, affirmative action's opponents launched a massive attack on California's affirmative action programs.⁴⁹ In response to pressure by Governor Pete Wilson and University of California Regent Ward Connerly, a number of California's public institutions began repealing their affirmative action programs. In a 1995 lawsuit, Governor Wilson and Connerly attacked affirmative action programs administered by the State Personnel Board, the California Lottery, the Department of General Services, and the California Community Colleges.⁵⁰ The University of California Board of Regents removed any consideration of race, religion, gender, color, ethnicity, or national origin from the admissions process. Similarly, the California State University system revised its

⁴⁵ Univ. Cal Regents v. Bakke, 438 U.S. 265 (1978).

⁴⁶ See, e.g., Fullilove v. Klutznick, 448 U.S. 448 (1980) (an affirmative action program requiring that 10% of federal funds granted to local public works projects be used to procure services or supplies from minority owned business was upheld); United Steelworkers of America, AFL-CIO-CLC v. Weber, 443 U.S. 193 (1979) (affirmative action plan collectively bargained by an employer and a union reserving 50% of the openings in a training program for black craft workers was valid); Johnson v. Transp. Agency, Santa Clara County, Cal., et al., 480 U.S. 616 (county affirmative action plan that was promulgated to remedy past discrimination was valid);

⁴⁷ These legal attacks continue today. As recently as 2003, the Supreme Court was called upon to evaluate affirmative action policies at the University of Michigan. See e.g. Gratz v. Bollinger, 123 S.Ct. 2411 (2003) (the undergraduate department's affirmative action program was invalidated as unconstitutional); and Grutter v. Bollinger, 123 S.Ct. 2325 (2003) (the law school's affirmative action program was upheld).

⁴⁸ 488 U.S. 469 (1989)

⁴⁹ Although opponents of affirmative action gained passage of anti-affirmative action ballot initiatives in California and Washington State, they have not achieved the same level of success with state legislative campaigns. Leadership Conference on Civil Rights Education Fund, *Anti-Affirmative Action Threats in the States: 1997-2003* (Jan. 30, 2004), available at <http://www.civilrights.org/issues/affirmative/details.cfm?id=18114>. Of the 94 bills and resolutions that have been introduced since 1997, only six have been enacted. *Id.*

⁵⁰ Connerly v. State Personnel Board, 92 Cal.App.4th 16 (2001).

affirmative action outreach program, changing its focus from race and gender to economic and educational disadvantage.

Affirmative action opponents placed Proposition 209⁵¹ on the November 1996 state ballot, where it was approved by voters, 55% to 45%. It invalidated California state and local affirmative action programs in employment, contracting, and education.⁵² The passage of Proposition 209 angered social justice advocates because it was billed as a “civil rights” act and purported to ban discrimination based on race, gender, color, ethnicity, or national origin that was already illegal under California state and federal law. A flurry of activity erupted immediately after Proposition 209 was enacted. Civil rights groups, including Equal Rights Advocates (ERA) and The Impact Fund, filed suit in federal court seeking to enjoin the Proposition’s implementation, arguing that it was unconstitutional and against federal law.⁵³ Another lawsuit by ERA and other civil rights organizations sought unsuccessfully to enjoin cessation of data collection that was tied to a newly invalidated affirmative action program. Opponents of affirmative action filed their own suits challenging state and local affirmative action programs under the newly enacted law.⁵⁴ Despite legal challenges, Proposition 209 was added to the California Constitution. It bars, with few exceptions, all California public institutions from engaging in race or gender-based affirmative action.

Public officials, baffled because many of their previous methods of ensuring equal opportunity were contrary to Proposition 209’s ban on “preferential treatment,” were unsure of how to proceed without running afoul of the new law.⁵⁵ Theodore Wang, then a staff attorney with the Lawyers’ Committee for Civil Rights and now Policy Director of Chinese for Affirmative Action, explained: “[t]hey have a mandate to get rid

⁵¹ The relevant portion of Proposition 209 reads:

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.

⁵² LEGISLATIVE ANALYST, ANALYSIS OF PROPOSITION 209, available at <http://vote96.ss.ca.gov/Vote96/html/BP/209analysis.htm> (last visited Apr. 6, 2004).

⁵³ Coalition for Economic Equity v. Wilson, 946 F.Supp.1480 (N.D.Cal. 1996) *reversed*, 122 F.3d 692 (9th Cir. 1997).

⁵⁴ See, e.g., Hi-Voltage Wire Works, Inc. v. City of San Jose, 84 Cal.Rptr.2d 885 (1999), *aff’d*, 101 Cal.Rptr.2d 653 (2000) (a contractor successfully challenged a city policy requiring contractors to either meet goals for minority and women participation or demonstrate that they had not engaged in discrimination as violative of Proposition 209).

⁵⁵ Eva Paterson & Oren Sellstrom, *Equal Opportunity in a Post-Proposition 209 World*, 26-SUM Hum. Rts. 9 (1999).

of discrimination they've identified, but on the other hand they can't use affirmative action."⁵⁶ Contradictory court decisions upholding and invalidating public affirmative action programs in Los Angeles, San Francisco, and San Jose added to public officials' confusion.

Most California government agencies responded to Proposition 209 by repealing their affirmative action policies. In 1998, a survey by Chinese for Affirmative Action and ERA of 68 California government agencies, higher education institutions, and school districts found that most were in the process of repealing affirmative action programs not required by federal laws or funding stipulations.⁵⁷ To make matters worse, when some municipalities discontinued their affirmative action policies, they went further than Proposition 209's requirements and stopped collecting race and gender data.⁵⁸

Some agencies maintained policies aimed at eliminating race and gender disparities in programs they commissioned. The City and County of San Francisco, Los Angeles County, City of Los Angeles, City of Richmond, and California Community Colleges did not make any significant changes to their affirmative action in public contracting policies. Cities that maintained their affirmative action policies faced legal challenges: the City of Los Angeles successfully defended its programs while a similar program in San Jose was invalidated.⁵⁹

Proposition 209 dealt a severe blow to tradeswomen. The proposition eliminated successful affirmative action programs at the state and local level. In the absence of affirmative action programs and monitoring, employers have been left at best without direction or motivation to provide equal opportunity for tradeswomen. At worst, the vestiges of the male-dominated construction industry have returned. While federal affirmative action programs remain intact, some contractors returned to old practices of

⁵⁶ Rick DelVecchio, *Cities Trying to Detour Past Prop. 209*, S.F.CHRON., Nov. 25, 1996, at A-1, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/1996/11/25/MN64153.DTL>.

⁵⁷ *Losing Ground: The Impact of Proposition 209 on Minority and Women-Owned Businesses in California* (Chinese for Affirmative Action, San Francisco, CA) (on file with Chinese for Affirmative Action).

⁵⁸ *Id.* The City of Fresno stopped collecting race and gender data upon repealing its affirmative action program even though Proposition 209 did not mandate that agencies cease data collection. See, e.g., *Connerly v. State Personnel Board*, 92 Cal.App.4th 16, 48 (2001).

⁵⁹ See *Hi-Voltage*, *supra* note 54 and *AMPCO System Parking v. City of Los Angeles* (Cal. Super. Ct. No. DC189-541 1998).

exclusion. Some employers believe and have told tradeswomen that because there is no more affirmative action, they no longer have to hire women.⁶⁰

PROJECT HISTORY

For many years, The Impact Fund and ERA have litigated, researched, advocated, and discussed issues surrounding affirmative action and tradeswomen. ERA's Tradeswomen's Legal Advocacy Project provides legal assistance to many individual tradeswomen and works closely with tradeswomen advocacy groups, such as Tradeswomen Now and Tomorrow and Tradeswomen, Inc., around the country to develop a national strategy for improving access and advancement opportunities for higher paying jobs for women. ERA has brought lawsuits on behalf of tradeswomen and, along with The Impact Fund, were active opponents of Proposition 209. Lawyers from each organization worked with teams of civil rights attorneys on the litigation that followed Proposition 209's passage.

The Discrimination Research Center (DRC) was launched by The Impact Fund in 1998 in direct response to the passage of Proposition 209. The Impact Fund, along with other civil rights organizations in the San Francisco Bay Area, recognized the need for an independent institution that could objectively monitor the status of civil rights protections in California and provide concrete, empirical and credible evidence regarding the prevalence of differential treatment of the state's increasingly diverse populations. To this end, DRC acts in two ways. First, DRC conducts social science research to determine the extent to which unlawful barriers to equal employment or access to public services exist. Second, DRC produces and disseminates research reports for policymakers, academic researchers, industry and labor, community leaders and organizations, and the general public that suggest ways to eliminate and prevent discrimination and spur concerted action. Utilizing social science methodologies, DRC has uncovered preferential treatment of white job applicants over African Americans at temporary employment agencies, documented the denial of job opportunities to women in

⁶⁰*Supra* note 30, at 29.

the automotive industry, and examined steering of accented Latino and Asian Pacific American hotel job applicants.

This report is a collaborative effort between DRC and ERA. Its purpose is to examine the prevalence and character of gender discrimination in the construction industry in the San Francisco Bay Area and to assess the impact of Proposition 209 on tradeswomen. Ultimately, its goal is to promote fair and equal treatment of tradeswomen by educating the public, policymakers, contractors, advocates and tradeswomen about the struggles of female construction workers and by identifying potential areas for impact litigation or policy change.

The project had four parts. First, DRC audited the hiring practices of construction companies working on public contracts in the San Francisco Bay Area. Second, DRC collected demographic information regarding the numbers of tradeswomen working nationally and in California. Third, DRC analyzed payroll data collected by two public agencies in San Francisco to compare the percentage of hours worked by women before and after the passage of Proposition 209. Finally, DRC interviewed individuals knowledgeable about the construction industry and in a position to evaluate the effects of Proposition 209 on women in the trades.

PART 1: THE AUDIT

In the first part of the study, DRC audited construction companies to compare the treatment of male and female job applicants for construction jobs. This audit utilized the matched-pair testing methodology, a social science technique which has been used extensively to examine fair housing practices, employment discrimination, lending practices, and customer discrimination.⁶¹ In the employment context, this methodology compares the treatment of job applicants, called “testers,” who present equal qualifications and similar personal traits to the same employer while competing for the same job.

DRC hired, trained and sent four testers (two white men and two white women) to

⁶¹ For a review of how testing has been utilized, see [A National Report Card on Discrimination in America: The Role of Testing](#), Michael Fix & Margery Austin Turner, Eds., The Urban Institute, 1998.

Table 1. Results of the Construction Company Audit

	General Contractors	Steel Companies	Total
Preference for female tester	1	0	1
Preference for male tester	2	1	3
No preference	19	1	20
Untested	10	13	23
Total	32	15	47

47 Bay Area construction companies that held public contracts.⁶² These companies were selected according to three criteria: (1) they had been granted public contracts by state or city agencies or acted as subcontractors to the primary public contractors, (2) their payroll data suggested a non-diverse workforce, and (3) their application processes and positions were suited for the testing methodology.⁶³ The testers applied for general labor/helper positions or ironworker apprenticeship sponsorship.

Unfortunately, the results of this audit were inconclusive: DRC was unable to complete testing of 23 of the 47 companies (see Table 1). Thirteen companies were not hiring, and 10 companies hired only union members, making the testers ineligible for jobs with these companies. While the audit uncovered some preference for the male tester applicants,⁶⁴ it helped primarily to identify areas for further study. For example, comments made to the testers suggest that while tradeswomen may be hired to meet contractual obligations, they may not be retained or employed full-time. Additionally, comments made by managers to the male testers were more encouraging than those made to women and included suggestions to prepare for higher level construction jobs or computer related work.⁶⁵

⁶² Proposition 209 does not apply to private contractors.

⁶³ The matched-pair testing methodology can only be utilized to examine differential treatment in hiring for entry-level positions which require no specialized qualifications or certifications.

⁶⁴ Preference is demonstrated when the employer treats one of the applicants more favorably than the other applicant (e.g., job offer, job interview, better pay, coaching). In 2 cases, the male tester received multiple phone calls from the employer while the female tester received no phone calls. In another case, the male tester was asked to apply for a position while the female tester was redirected to other agencies. Finally, in 1 case, the female tester was offered a position while the male tester was not.

⁶⁵ One company official remarked to a female tester that it was fortunate she was a woman because women and minorities would be hired elsewhere more quickly if laid off from his company. Hiring officials at some companies urged the male testers to consider carpentry or computer positions rather than general labor positions because the jobs paid better.

PART 2: DEMOGRAPHIC DATA

DRC compiled statistics from various government agencies⁶⁶ regarding the percentage of women working in construction before and after the passage of Proposition 209. These statistics provide information regarding patterns of female workforce participation and are another means of evaluating the impact of Proposition 209. The statistics obtained for the years 1985-2003 included:

- the percentage of women employed in the construction trades nationally.
- the percentage of women employed in the construction industry in California.
- the percentage of women employed in specific construction occupations in California.
- the percentage of women in construction trades apprenticeship programs in California.

The data illustrate broad trends in the construction workforce but cannot reflect the exact number of tradeswomen due to the lack of uniformity across different government agencies in categorizing industries and tradeswomen. The fluid nature of jobs and work in the trades also impede precise numerical counts. Nonetheless, these numbers remain the best available figures. Their limitations indicate the need for more comprehensive and consistent data collection.⁶⁷

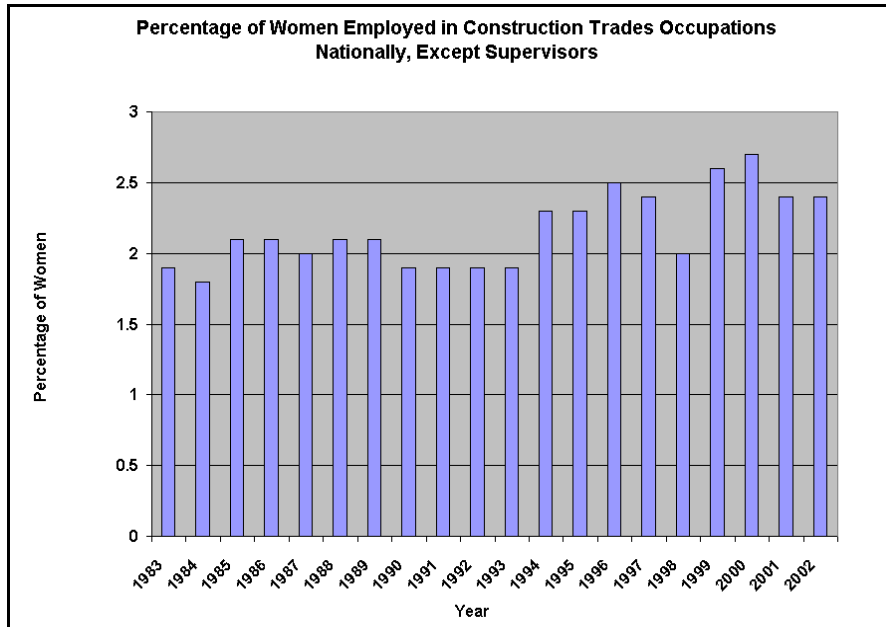
Nationally, the percentage of women working in the construction trades has risen 26% over the past 20 years, from 1.9% in 1983 to 2.4% in 2002 (see Chart 1). Even with this increase, however, the percentage of women in construction has remained extremely low, never rising above 2.7%.

Women are better represented in the construction industry in California than nationally, possibly reflecting California's historical role as a leader in social progress.

⁶⁶ These statistics were obtained from the U.S. Department of Labor Bureau of Labor Statistics (BLS), the U.S. Census Bureau, the California Labor Market Information Division of the California Employment Development Department, the California Senate Office of Research, and University of California at Berkeley's Doe Library.

⁶⁷ See *infra* p. 24. According to the National Council for Research on Women (NCRW), critical and accurate information about women is no longer available from the federal government. For example, the removal of 25 fact sheets from the Department of Labor Women's Bureau website denies "women and researchers critical information on everything from staffing to pay equity to child care to issues of specific importance to black and Latina women and women business owners." National Council for Research on Women, Press Release, April 28, 2004, www.ncrw.org.

Chart 1.



Source: Bureau of Labor Statistics, U.S. Department of Labor. Current Population Survey: Employed persons by detailed occupation and sex, 1983-2002 annual average.⁶⁸

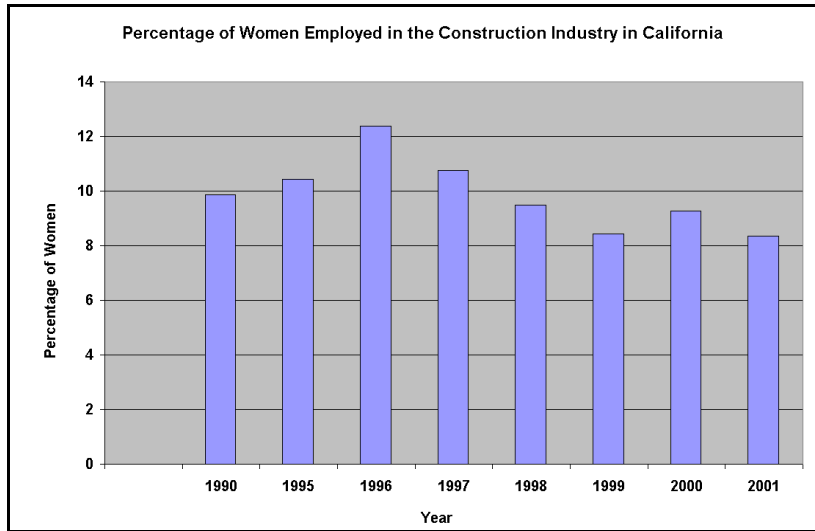
At the same time, the percentage of women employed in California's construction industry has decreased since 1996 (see Chart 2), even while the number of men employed in this industry has increased (see Chart 3).

The data presented in Charts 2 and 3 reflect *all* individuals employed in the construction industry, including tradespersons and laborers as well as persons employed in clerical, janitorial, or other occupations. Hence, the numbers of women represented by these charts appears inflated in contrast to the numbers presented in Chart 1, which is limited to persons employed in the construction *trades*. These data are presented to show the downward trends of women in the construction industry and do not reflect exact numbers of tradeswomen.

Chart 2 documents the changing levels of female employment in California's construction industry from 1990 to 2001. The percentage of female workers in California's construction industry increased between 1990 and 1996. Women's representation, including women in clerical, janitorial, and other non-trades positions, reached its highest point at 12.4% in 1996. After Proposition 209 passed in late 1996, the

⁶⁸ The BLS provides a perspective on otherwise limited data regarding women in the construction trades. A representative from the BLS cautions, however, that smaller estimates for detailed occupations, such as the numbers for women in the construction trades, may have large standard errors associated with them.

Chart 2.



Source: Bureau of Labor Statistics, U.S. Department of Labor. Local Area Unemployment Statistics (LAUS). Table 17. States: Percent distribution of civilians by sex, race, Hispanic origin, and industry, annual averages, California.

percentage of women working in the construction industry dropped, reaching its lowest point in 2001 at 8.4%. Thus, while the percentage of women employed in the construction industry rose 26% from 1990 to 1996 when affirmative action programs were legal, it dropped 33% after these programs were eliminated.

As Chart 3 indicates, the total construction industry workforce has increased since 1995, indicating an increase in the number of people working in construction. This increase is reflected almost entirely in increasing numbers of male employees, while the number of female employees has experienced no appreciable increase. Since the data indicate an increase in the total number of construction workers, the failure of the number of women in construction to increase cannot be explained by a lack of jobs. In fact, it may be best explained by non-economic factors, such as discrimination or decreased efforts to recruit women.

In contrast, Chart 3 also shows that the total number of jobs in California's construction industry decreased from 1990 to 1995, at a time when the percentage of women working in the industry was increasing (see Chart 2). Thus, the percentage of women in the construction industry increased in California's shrinking labor market when affirmative action existed, but, as described above, women have not benefited from the construction industry's growth since affirmative action was banned.

Chart 3.



Source: Bureau of Labor Statistics, U.S. Department of Labor. Local Area Unemployment Statistics (LAUS). Table 17. States: Percent distribution of civilians by sex, race, Hispanic origin, and industry, annual averages, California.

The data also demonstrate that both the numbers and the percentages of women within specific construction trades in California dropped during the period from 1990 to 2000.⁶⁹ According to 2000 Census data, there were 27% fewer female laborers and electricians, 25% fewer female plumbers, and 15% fewer female carpenters than in 1990 (see Table 3).⁷⁰ Likewise, the percentage of women working in these trades decreased during the same time period. The percentage of female laborers and electricians dropped 22% and female plumbers dropped 16%. Only in carpentry did the percentage of tradeswomen increase, by 4%.⁷¹

The decline in the percentages of tradeswomen employed in three of the four

⁶⁹ These data provided by the U.S. Census Bureau are produced decennially and are not available for intervening years.

⁷⁰ DRC examined these crafts because they reflect occupations within the industry that employ higher numbers of women and because their titles remained relatively consistent between the 1980, 1990 and 2000 Census Bureau surveys. Laborers may have slightly higher numbers because the designation “laborer” encompasses workers performing a broader range of tasks than those in the other trades. Furthermore, laborers often perform less specialized tasks. Some of the other trades have higher numbers of women as a result of affirmative action injunctive relief gained through litigation. *See, e.g., supra* note 17. For the 1990 data, the numbers for “carpenters, except apprentices,” “electricians, except apprentices,” and “plumbers, except apprentices” were combined, respectively, with their apprentice counterparts (i.e., “carpenters with apprentices,” etc.) to provide the closest comparison with 2000 data.

⁷¹ This increase is most likely due to the Carpenters’ Union’s court-imposed affirmative action policy. *See supra* note 17.

Table 3.

Carpenters in California, by Sex: 1980, 1990, 2000				
	# Female	% Female	# Male	% Male
1980	2107	1.84	112350	98.16
1990	3042	1.82	163654	98.18
2000	2585	1.90	133185	98.10
Electricians in California, by Sex: 1980, 1990, 2000				
	# Female	% Female	# Male	% Male
1980	1191	2.37	48985	97.63
1990	2357	3.44	66083	96.56
2000	1723	2.70	62020	97.30
Plumbers, Pipefitters, and Steamfitters in California, by Sex: 1980, 1990, 2000				
	# Female	% Female	# Male	% Male
1980	590	1.41	41128	98.59
1990	1127	1.87	59294	98.13
2000	849	1.57	53165	98.43
Construction Laborers in California, by Sex: 1990, 2000				
	# Female	% Female	# Male	% Male
1990	5897	3.42	166280	96.58
2000	4283	2.67	156040	97.33

Source: U.S. Census Bureau: 1980⁷², 1990⁷³, and 2000⁷⁴ reports

trades categories listed and the low percentages for the 2000 Census data indicate that since Proposition 209 went into effect, there have been no gains for women within most construction trades (see Chart 4).

Finally, statistics provided by the California Department of Industrial Relations Division of Apprenticeship Standards (DAS)⁷⁵ illustrate that while the overall *number* of women in construction apprenticeship programs has increased over the past decade, the *percentage* of women in these programs has actually dropped (see Chart 5). The

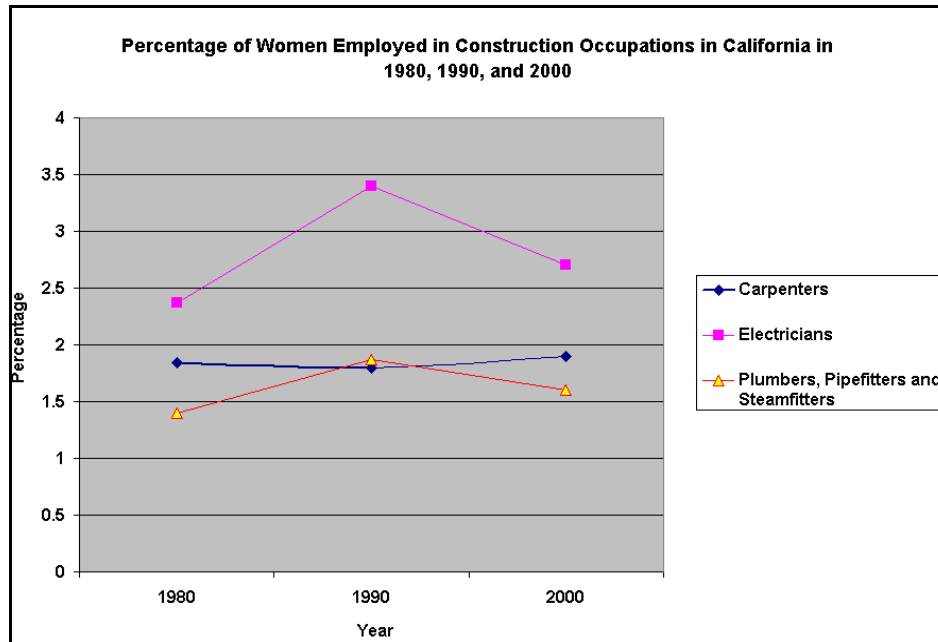
⁷² US Census Bureau. 1980 Census of Population, Detailed Population Characteristics, California. Table 221. Occupation of Employed Persons by Age, Sex, Race, and Spanish Origin: 1980.

⁷³ US Census Bureau. Census 1990 Equal Employment Opportunity File Historical Statistic Abstract. Detailed Occupation by Race, Hispanic Origin and Sex, available at <http://censtats.census.gov/eo/eo.shtml> (last visited May 26, 2004).

⁷⁴ US Census Bureau. Census 2000 EEO Data Tool. Employment by OPM Occupation Groups, available at <http://www.census.gov/eo2000/index.html> (last visited May 26, 2004).

⁷⁵ The Division of Apprenticeship Standards is a state agency that operates under federal guidelines outlined in Title 29, Part 30 of the Code of Federal Regulations: Equal Employment Opportunity in Apprenticeship and Training, available at http://www.access.gpo.gov/nara/cfr/waisidx_00/29cfr30_00.html (last visited Apr. 16, 2004).

Chart 4.



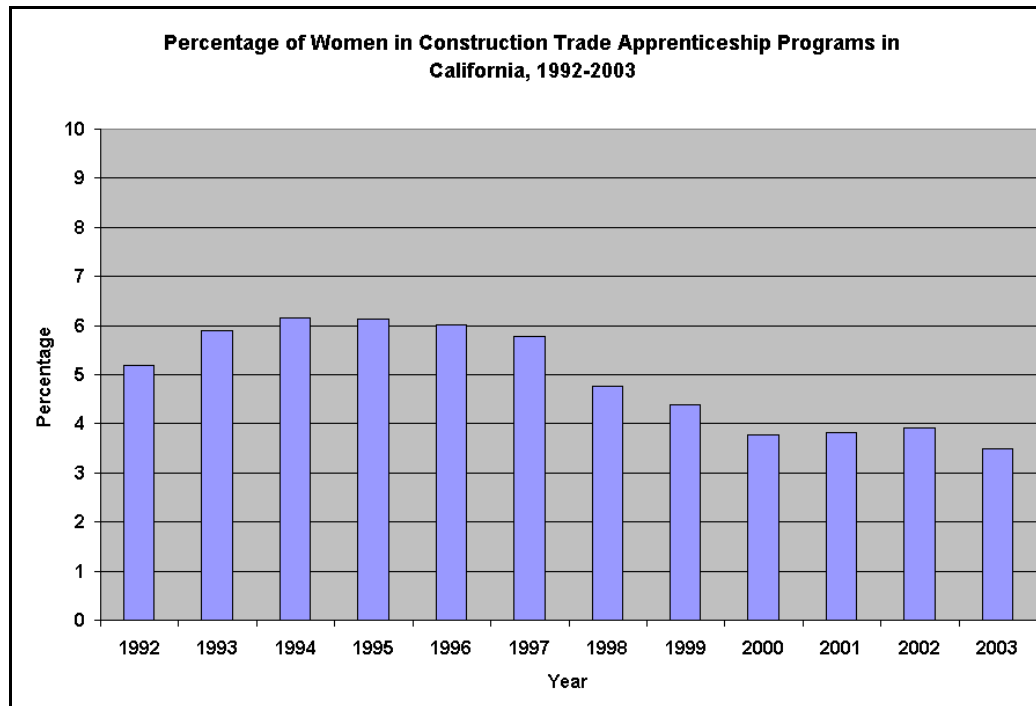
Source: U.S. Census Bureau: 1980, 1990, and 2000 reports

percentage of women in apprenticeship programs reached its peak in 1994 at 6.16%, then declined to 3.48% in 2003, a 41% drop. Under the federal government’s guidelines for state-run apprenticeship programs, DAS is required to comply with federal affirmative action obligations, notwithstanding Proposition 209.⁷⁶ Nonetheless, the percentage of women in apprenticeship programs dropped sharply immediately after Proposition 209’s passage in 1996, suggesting that the proposition’s passage accelerated the decline.⁷⁷

⁷⁶ Federal law requires that sponsors of apprenticeship programs adopt a “written affirmative action plan.” 29 C.F.R. § 30.4(a) (2004). The California Apprenticeship Council (CAC), which is under the jurisdiction of the U.S. Department of Labor’s Bureau of Apprenticeship and Training (BAT), registers apprenticeship programs. Department of Industrial Relations Bulletin Newsletters, *Executive Order Reduces Affirmative Action Mandates* (May/June 1995), available at http://www.dir.ca.gov/Bulletin/May_June_95/affirmative_action.html. In order to comply with 29 C.F.R. § 30, CAC issued the California Plan for Equal Opportunity in Apprenticeship, which mandates that apprenticeship program sponsors comply with Title 29 of the Code of Federal Regulations, Part 30. 3 Fair Employment Practices § 28:30 (2004). However, on March 31, 2004, California governor Arnold Schwarzenegger issued an Executive Order prohibiting “[a]ll state agencies, departments, boards, and commissions” from hiring and promotion practices that take into account race, ethnicity, national origin, color, ancestry, gender, and various other factors that are not job-related. EX. ORDER NO. S-6-04 (Mar. 31, 2004). The Order mentions no exceptions for federally mandated affirmative action, and therefore affirmative action opponents may use it to once again challenge affirmative action in construction trades and apprenticeship programs.

⁷⁷ The percentage of women in all apprenticeship programs in California declined significantly after the passage of 209. Women accounted for 10.8 % of all apprentices in 1995 and only 7.4 % by 2002, a 31%

Chart 5.



Source: California Department of Industrial Relations Division of Apprenticeship Standards

In addition, then-Governor Pete Wilson’s 1995 Executive Order specifically “eliminate[d] the state requirement that apprenticeship program sponsors participate in annual workshops by women’s and minority organizations.”⁷⁸ The lack of oversight or enforcement of affirmative action made it easier for contractors, unions, and other entities to disregard affirmative action goals.⁷⁹ The resulting attitudes of apprenticeship coordinators and contractors that they no longer were required to recruit and retain women contributed to a reversion to traditional male-dominated hiring practices. Due to their role in training workers in the trades, apprenticeship programs serve as harbingers of the future construction workforce. As the percentage of female apprentices declines, their representation in the trades will continue to decline as well.

decline. Division of Apprenticeship Standards Annual Report (1995), available at www.dir.ca.gov/das/exhibit5.htm; Division of Apprenticeship Standards Annual Report (2002), available at <http://www.dir.ca.gov/DAS/DASAnnualReport2002/Exhibit52002.html>.

⁷⁸ The Department of Industrial Relations Bulletin Newsletters, *Executive Order Reduces Affirmative Action Mandates*, (May/June 1995), available at http://www.dir.ca.gov/bulletin/May_June_95/affirmative_action.html.

⁷⁹ See, e.g., *infra* pp. 28, 30.

Limitations

A true statewide percentage of women in the construction trades is difficult to ascertain both because of the statistical problems discussed previously and because there are no official or formal statewide efforts to collect such data. Many state or municipal agencies stopped collecting race- or gender-based data following Proposition 209's enactment.⁸⁰ Moreover, the limited data collection that still occurs varies by agency. For example, for some of those local government agencies that continued to collect gender-based data after Proposition 209, the data represent only particular city or county projects and do not offer a comprehensive perspective on the trends of women in the trades in California as a whole.⁸¹ Similarly, the records maintained on various microlevels, by unions, contractors, or local compliance offices, provide only partial summaries of the employment trends of tradeswomen on a statewide level. Like the government agencies, many unions and contractors have figures only for current or specific trades or projects. This utter failure by any agency or organization to compile consistent, statewide gender-based workforce data in the construction trades hides the true impact of Proposition 209, gravely hampers efforts to identify barriers to women entering the trades, and makes efforts to remove such obstacles more difficult.

PART 3: PAYROLL ANALYSIS

In contrast to the sharp decreases in tradeswomen statewide, the city and county of San Francisco did not experience a substantial decline in women's employment on public construction projects. In order to examine the workforce participation of tradeswomen on public construction jobs in San Francisco, DRC next obtained and analyzed payroll records from 76 projects contracted by two major public entities, the San Francisco Redevelopment Agency and the Department of Public Works, from 1993

⁸⁰ See *supra* note 58.

⁸¹ Of the agencies contacted, only the California Department of Industrial Relations' Division of Apprenticeship Standards, the U.S. Census Bureau, and the U.S. Department of Labor's Bureau of Labor Statistics maintained records for the requested time periods regarding the percentages of women in construction occupations in California. The California Employment Development Department's Labor Market Information Division, the agency responsible for monitoring statewide data on industries, relies on the decennial U.S. Census Bureau reports for calculating gender- and race-based statistics for industries and occupations in California, including the construction trades.

Table 2. Number of Projects Included in Analysis

		Time Period		Total
		Pre-Prop. 209	Post-Prop. 209	
Public Agency	Redevelopment Agency	6	58	64
	Dept. of Public Works	7	5	12
Total		13	63	76

through 1998. These payroll records indicate the race and gender of each employee working on a project. Thus, they provide a concrete means of measuring the number of hours worked by workers of different demographic groups on any given construction job at any point in time from 1993 through 1998.

The payroll data was derived from 64 Redevelopment Agency projects and 12 Department of Public Works⁸² projects (see Table 2). Thirteen of the projects were completed before the passage of Proposition 209, while 63 projects were completed after its passage.⁸³

From 1993 through 1998, tradeswomen worked an average⁸⁴ of 3.26% of the hours on all 76 projects studied, including one project where they worked 38% of the hours. On 17 of these projects, however, tradeswomen did not work at all. The average percentage of hours worked by women on all 76 of the projects rose slightly from 2.53% prior to the passage of Proposition 209 (1993 to November 1996) to 3.53% afterwards (November 1996 to 1998).⁸⁵ This analysis indicates that the percentage of women

⁸² The Human Rights Commission holds the building construction contract information for the Department of Public Works.

⁸³ The government agencies provided data regarding projects for which they had collected and maintained workforce data. Additional projects may have been contracted during the time period under study for which data was neither collected nor retained.

⁸⁴ DRC used the median as the measure of central tendency. Thus, women's participation rates exceeded 3.26% in half of the projects and were less than 3.26% in the other half.

⁸⁵ The time period studied for this project was not ideal for a number of reasons. First, its short span prevented DRC from firmly identifying the pattern of female participation before and after the passage of Proposition 209. DRC was precluded from examining data from a more comprehensive time period because many agencies only had records dating back to the early 1990s.

Second, because some of the projects (notably those contracted by the Department of Public Works) were worked on both before and after the passage of Proposition 209, they each may have been influenced by some of the same social forces. For example, Proposition 209 may have had an influence upon employer behavior even prior to its passage, as employers believing the initiative would pass may have simply stopped engaging in affirmative action programs in the months leading up to the vote. Equally, although Proposition 209 was passed in November 1996, it did not take effect until August 1997, so some employers may have still been engaging in affirmative action programs after the initiative's

working on projects contracted by both the Redevelopment Agency and the Department of Public Works, while low over the past decade, did not suffer the same decline as the rest of California after Proposition 209 passed.⁸⁶

One explanation for San Francisco's comparatively strong record may be its efforts to conduct business with minority and women-owned business enterprises. San Francisco's Administrative Code requires good faith efforts to solicit proposals for women and minority-owned business and business enterprises on all contract solicitations, including public works and construction.⁸⁷ In general, these companies have more female employees than non-minority male-owned firms. According to the Census Bureau, 35% of women-owned employer firms reported that 75% or more of their workforce was female, compared to less than 24% of other firms.⁸⁸

This suggests that government agencies can indeed take steps to ensure that underrepresented groups have access to these jobs despite Proposition 209. Their ability to do so, however, may hinge on the quality of their record keeping, an activity integral to monitoring and enforcement.⁸⁹

Because DRC was unable to attain sufficient records from public agencies throughout California, only limited conclusions can be drawn from this analysis about the workforce participation of tradeswomen pre- and post-Proposition 209.⁹⁰ Nonetheless,

passage. Nonetheless, we chose to utilize November 1996 as the dividing date between the pre- and post-Proposition 209 time blocks as it was the month when Proposition 209 was passed.

⁸⁶ See Part 2: Demographic Data, *supra* pp. 17-24. Other demographic data show that the number of women working in California's construction industry has declined since the passage of Proposition 209.

⁸⁷ City and County of San Francisco Administrative Code, Sec. 12D.

⁸⁸ U.S. Census Bureau press release, "Almost Half of All U.S. Small Business Home-Based," Nov. 5, 1997, available at <http://www.census.gov/Press-Release/cb97-182.html>.

⁸⁹ Between the two agencies, the Redevelopment Agency kept more extensive records and its projects had higher numbers of hours worked by women. The Redevelopment Agency keeps summary reports covering entire projects while the Human Rights Commission only keeps limited monthly or weekly payroll tracking forms for each project. Furthermore, the Redevelopment Agency was more willing to offer researchers their records. While each agency provided data covering a comparable number of projects prior to the passage of Proposition 209 (6 jobs from the Redevelopment Agency and 7 jobs from the Department of Public Works), the Redevelopment Agency sent data covering nearly 12 times as many jobs as the Department of Public Works for the period following the passage of Proposition 209 (58 jobs compared with 5 jobs). The more comprehensive data kept by the Redevelopment Agency and the willingness of this agency to submit its data facilitates the monitoring of tradeswomen's participation in the workforce.

⁹⁰ Data was solicited from a number of other agencies in the initial stages of this project. These agencies were unable to furnish any payroll data either because they did not maintain such records themselves or because they simply did not respond to DRC's request.

irretrievable or incomplete data expose a gap in the government's ability to monitor and promote equal employment opportunity.

PART 4: INTERVIEWS

In the final phase of the project, DRC interviewed thirty-three individuals about the status of tradeswomen in California and the effects of Proposition 209 upon their workforce participation. The goal was to obtain qualitative information to provide a meaningful context for the demographic and payroll data collected and to explain the downward trend of women in the trades.

Interviewees included tradeswomen; tradeswomen activists and advocates; recruiters; job trainers from community based organizations; apprenticeship coordinators; local, state, and federal government officials; union leaders; and contractors. The majority of the interviewees were either current or former tradeswomen, including electricians, a land surveyor, a sprinkler-fitter, an operating engineer, a plumber, and an ironworker. Other interviewees worked primarily as advocates for tradeswomen,⁹¹ including several representatives of Tradeswomen, Inc. Construction workforce developers from local community-based organizations and members of the California Apprenticeship Council's Blue Ribbon Committee on Women in Apprenticeships also participated. From the public sector, apprenticeship coordinators, compliance officers, and representatives of institutions such as the Division of Apprenticeship Standards at the California Department of Industrial Relations, the Labor Standards Enforcement Unit of the City and County of San Francisco Office of Contract Administration, the State Building and Construction Trades Council, and the California State Legislature Women's Caucus were interviewed. Finally, several representatives of construction companies participated.

The interviewees expressed varied and often contradictory viewpoints because they have different relationships with the trades. Some are industry insiders; others are from historically excluded groups; and still others enforce equal opportunity laws or support and advocate for tradeswomen.

⁹¹ Some of the tradeswomen were also activists.

The interviewees discussed the effect of affirmative action policies with regard to women in the construction industry and the effect of Proposition 209's affirmative action ban on tradeswomen. Their comments help to clarify the impact of this law and affirmative action policies in general. The interviewers asked open-ended, non-leading questions and allowed the interviewees to direct the conversation as much as possible. The interviews ranged from ten to fifty minutes and included questions regarding recruitment and retention of tradeswomen, sexual harassment in the workplace, and recommendations for reform.

Did affirmative action help tradeswomen?

- **Affirmative action promoted the recruitment and retention of women in the trades.** Most of the experts interviewed, notably tradeswomen, activists, and government officials, stated that affirmative action was an effective tool for promoting the recruitment and hiring of tradeswomen through hiring goals and timetables. Some interviewees also noted affirmative action's positive influence on the retention of women in the trades. Finally, many interviewees emphasized the importance that monitoring and enforcement activities of affirmative action compliance officials have on ensuring equal employment opportunities.
- **Affirmative action forced recruiters to make an effort to publicize job openings more widely and to find innovative ways to reach previously excluded groups.** Affirmative action forced recruiters to find new methods to recruit women, such as posting job announcements, contacting groups representing tradeswomen, and focusing recruitment efforts in places where women typically seek work, such as women's resource centers or employment halls. In the past, many people found construction jobs with assistance from family members or through interpersonal networking. These informal systems made it difficult for newcomers to gain access to construction jobs.

- **Affirmative action “gave women a foot in the door,”** said Juanita Douglas, a land surveyor, because it encouraged unions and contractors to hire female apprentices and tradeswomen by requiring that contractors make good faith efforts to meet hiring goals. “That’s where 209 really messed things up,” she added. “You need a foot in the door, to crack it open. Once you’ve got a job you can show them that you work, that you can do the work, and they will keep you on. That’s what’s needed. Once you’re in, you’re in.”
- **Legal mandates persuade contractors and apprenticeship programs to hire women.** Susie Suafai, a Workforce Development Program Manager with the National Economic Development and Law Center in Oakland, has been working in the employment field since 1974 helping women enter into the construction trades. Before the implementation of affirmative action, it was difficult for advocates such as Suafai to help women get into construction. On multiple occasions, foremen and contractors would tell her that they would never hire a woman, and they would laugh at the idea of women working in the construction and building trades. A few women were able to gain access but in very small numbers. After affirmative action policies were in place, the law required that women be integrated into the male-dominated workforce and attitudes toward hiring women improved.

Did Proposition 209 hurt tradeswomen?

- **Without mandated hiring goals and timetables, contractors do not hire women in the same way or in the same numbers as they did before the passage of Proposition 209.** One legal advocate said that the passage of Proposition 209 was interpreted by many contractors as permission to end efforts to diversify the workforce. Susie Suafai compares the current environment to that of the early 1970s. Now, she says, women are still the last hired, first fired. She believes that the declining numbers of women in the trades is a direct result of the elimination of affirmative action programs that required contractors and recruiters

to diversify the workplace. Selina Keene of the Ella Hill Hutch Community Center, a non-profit organization that provides construction referral and placement, said that without hiring goals specifically aimed at increasing the numbers of tradeswomen, some major contractors have hired no women.

- **Proposition 209 caused confusion about the status of unaffected anti-discrimination and affirmative action laws.** Some construction companies appear to operate as if Proposition 209 eradicated federal as well as state affirmative action policies. Others may have interpreted the passage of the proposition as a signal that federal guidelines would no longer be enforced. As Molly Martin of Tradeswomen, Inc., a former electrician and electrical inspector for the city of San Francisco, described, “Since Proposition 209 passed, contractors think that they do not have to hire women anymore and that they do not need to comply with federal hiring goals and timetables,” which remain valid irrespective of Proposition 209. Likewise, employers may conveniently confuse “preferential treatment” with “equal consideration.” Selina Keene said that in response to her suggestion that a woman be placed on his crew, a plastering contractor told her that he would be discriminating against men if he hired a woman.
- **Job placement programs with a large number of female clients have experienced a decreased demand for their services.** The lack of demand for female workers is felt by recruiters for apprenticeship programs, unions, and community-based organizations. Many of them respond to these labor market forces by doing less to recruit women. In contrast, an apprenticeship coordinator said that she notices a difference in recruitment behavior when a construction company has a contract with hiring goals: that company will recruit tradeswomen.

What can unions and apprenticeship programs do to lessen Proposition 209's negative impact on tradeswomen?

- **Apprenticeship programs can promote the recruitment and retention of tradeswomen.** An apprenticeship coordinator said that the best way to enhance the retention of tradeswomen is to establish a link between new female apprentices and female journey-level workers. Such a relationship offers the apprentices support and encouragement while giving them access to someone who understands--and has encountered--the challenges faced by women in construction. Furthermore, even though Proposition 209 invalidated some affirmative action policies, union apprenticeship programs that are registered with the California Apprenticeship Council are still bound by federal affirmative action requirements that can provide a legal tool for tradeswomen seeking to ensure that they are treated equally.
- **Unions have the potential to promote the integration of women into the construction workforce.** One ironworker noted that her union makes reasonable efforts to recruit women. A government official noted that union representatives are increasingly sensitive about the issues facing women in the trades, such as hostile work environments and sexual harassment.
- **However, unions may also play a role in excluding women from the trades.** An attorney observed that the regulations binding unions do not necessarily ensure that tradeswomen will be treated equitably. Some union leaders, in fact, may perpetuate negative stereotypes of women: as a member of the International Brotherhood of Teamsters Union observed, some union leaders believe that the trades are too difficult for women. Although unions are supposed to make efforts to recruit tradeswomen, not all of them do so. One government official noted that unions may send men out on jobs even when women are requested by contractors.

- **Some unions, like some companies, have become less receptive to women since the passage of Proposition 209.** In unions where negative stereotypes of tradeswomen had persisted, affirmative action provided a tool for overcoming these beliefs and fostering the inclusion of tradeswomen in spite of an unwelcoming social climate. Proposition 209 took this tool away. Jane Humes, a tradeswomen activist and a former electrician, said that some unions reduced their recruiting efforts after the passage of Proposition 209, when the pressure on contractors to hire women dropped.

What challenges do tradeswomen face on the job?

From these interviews, DRC identified a number of pre-existing related issues that tradeswomen face and that contribute to the poor retention of women in the trades irrespective of Proposition 209's direct impact. While not exhaustive or typical of the experiences of every tradeswoman on the job, the interviews provide important contextual information and highlight some of the on-the-job challenges that need to be overcome in order to retain women in the trades.

- **Affirmative action did not significantly alter the way tradeswomen were perceived or treated once on the job.** A number of tradeswomen emphasized that while affirmative action may have helped them get hired, they were “on their own” after that. They attribute their career success and their ability to overcome workplace barriers to hard work, solid skills, and a determined outlook.
- **Negative stereotypes of women persist in the construction industry.** Stereotypes about women's ability to endure physically intense labor are pervasive. Many people in the construction industry believe that construction is “a man's job” suitable only for “big and brawny” men. Outmoded ideas persist that women distract the men, are incapable of successfully doing heavy work, and do not really want to work in construction. One advocate noted that many contractors believe that their trade is too hard for women.

- **Tradeswomen must work harder than their male counterparts to demonstrate that they are capable of performing the same tasks that were traditionally performed by men.** The tradeswomen interviewed described their repeated efforts to prove themselves each time they walked onto a new job site. They reported that they had to exhibit greater strength and skill than their male counterparts to be hired and retained. Madeline Mixer, a labor economist and a retired regional administrator of the Women's Bureau of the U.S. Department of Labor, said that women must work harder and be better than men. They are held to higher work performance standards earlier in their careers than men, even when they are still learning the trade.
- **Tradeswomen do not always receive training comparable to that provided to men.** Apprentices are expected to be fully trained in a variety of tasks by the time they have completed their training. However, one apprenticeship coordinator has observed that female apprentices are sometimes asked to do the same simple tasks over and over again. This keeps them from receiving the full training afforded male apprentices and reduces their ability to compete with other workers once they have completed the apprenticeship program.
- **Tradeswomen with children face additional barriers.** John Bullock, executive director of the Carpenters Training Committee for Northern California and chair of the California Apprenticeship Council Blue Ribbon Committee on Women in Apprenticeship Subcommittee on Retention, said that availability of childcare is a critical issue for tradeswomen. Many women in construction are single parents for whom childcare may not be readily accessible. Arrangements for daycare and transportation frequently must be made in advance, making it difficult for tradeswomen with children to accept jobs offered at the last minute, located far from home, beginning early in the morning, or requiring overtime. Even tradeswomen without children are affected by this problem. Some contractors are less likely to hire any women because of their perception that women generally

are not dependable, must work around their children's schedules, cannot work long hours, and cannot travel to distant sites.

- **Women are discouraged from filing sexual harassment cases.** A female plumber believes that women who file sexual harassment cases do not help the cause of women in the trades. She fears that if too many women sue, then bosses will be more reluctant to hire women. This kind of attitude can prevent tradeswomen from reporting incidents of sexual harassment or pursuing claims.
- **Women are not always provided with appropriate safety gear.** Women are forced to risk industrial injuries because standard issue safety harnesses, hardhats, gloves and other protective gear required for work are not always available to female employees in the appropriate sizes. One female ironworker was told by her employer that obtaining equipment suited for women would be too costly. Instead of having access to safety equipment that fits her, she is given equipment that is ill-fitting or too loose.
- **Women are not given equal access to bathrooms.** One interviewee commented that some contractors fail to provide bathrooms for women or they do not allow access to the bathrooms that they do have. On a large San Francisco construction site, where seven or eight tradeswomen worked, the safety director was reluctant to give bathroom keys to the women. The safety director asked our interviewee, "Why should I give you a key if you will just go and let other people use it?" A general contractor on another site told the same ironworker to go to Starbucks to use the bathroom, so her subcontractor gave her a few dollars to buy something whenever she needed to go to the bathroom. This meant that, unlike her male co-workers, she had to interrupt her workday and flow of work just to use the restroom. Her absences also affected others' perceptions about her work ethic.

The interviewees agreed that affirmative action programs increased job opportunities for tradeswomen. Consistent with the decline in the percentage of

tradeswomen documented by the Census Bureau and the Bureau of Labor Statistics, they reported a decrease in the number of tradeswomen in California following the passage of Proposition 209. They attributed the low numbers of women in the trades to a variety of factors, including the demise of state-sponsored affirmative action programs, open opposition to federal affirmative action goals, apathy towards diversifying the workforce, barriers to breaking into the “old boy’s network” to learn about job opportunities, and the still prevalent attitude that women do not belong in the trades. The interviewees offered suggestions for reform and future actions to promote the recruitment and retention of tradeswomen. These recommendations are discussed below.

RECOMMENDATIONS⁹²

Government officials, contractors, unions, apprenticeship programs, tradeswomen, activists, and community based organizations can take specific actions to promote the recruitment and retention of women in the trades. These recommendations, many of which were suggested by our interviewees, include:

Increase recruitment of women in the trades:

- Educate girls about the trades, beginning as early as elementary school, so that girls grow up considering construction work to be a viable career option.
- Start vocational programs at high schools and community colleges which both boys and girls are encouraged to join.
- Create mentoring programs for women at vocational schools to support women interested in pursuing a career in the trades.
- Identify role models for future tradeswomen by encouraging current tradeswomen to share their experiences in the trades with young girls and women in as wide a variety of locations as possible.

⁹² The work of the California Tradeswomen Policy Committee, which ERA is a part of, has developed a similar list of recommendations that address some of the same challenges raised in this paper. A number of individuals who were interviewed for this project have also contributed to the work produced by this committee.

- Make recruitment materials more “woman-friendly” by including images of women and eliminating offensive or sexist language.
- Increase targeted funding to community-based programs that recruit, train, prepare and support women to enter and succeed in trades careers, especially pre-apprenticeship and workforce development programs that target low-income women seeking self-sufficient wages to support their families.

Strengthen apprenticeship programs to better support women:

- Promote pre-apprenticeship training, where women can begin to acquire skills to enhance their success in the apprenticeship programs.
- Foster mentoring relationships between apprentices and journey-level tradeswomen.
- Create support groups for female apprentices.
- Increase oversight of apprenticeship programs to ensure that female apprentices are learning all that they need to know.
- Hire more female instructors for apprentices.

Facilitate the job search for tradeswomen:

- Foster partnerships among apprenticeship programs, community based organizations, recruiters, and contractors.
- Create centers where women can go to learn about the trades, ask questions, gain support from other tradeswomen, look for jobs, and network.

Increase retention of women in the trades:

- Inform women of the challenges of a career in construction before they enter the field so that their expectations are realistic.
- Provide tradeswomen with appropriate safety equipment.
- Create women’s committees within unions to provide both formal and informal support, including networking, mentoring, and ongoing education and training.
- Hold conferences where tradeswomen can meet to discuss their experiences and develop strategies for overcoming challenges in the workplace.

- Educate both male and female apprentices and journeypersons, as well as contractors, union officials, and contract compliance officers, about sexual harassment and other types of gender discrimination women face.
- Implement practices that promote awareness of these issues, such as sexual harassment training, exit interviews for women leaving the trades, and brochures for contractors addressing recruitment, retention, and sexual harassment.
- Provide daycare services for parents in the trades.
- Subsidize transportation.

Increase enforcement of contractual obligations:

- Implement, support, and enforce local hiring goals for the hiring of a particular percentage of workers from the area in which construction will occur.
- Increase funding to pay for staff engaged in monitoring and enforcement activities.
- Require government agencies to collect data regarding the workforces on public projects.
- Audit contractors by conducting periodic site visits and enforce provisions if contract goals are not met.
- Convene oversight committees comprised of community based organizations, contractors, and compliance officers.
- Create a clear threshold (e.g., \$50 million) above which all federally funded projects must be designated Megaprojects, which will put these projects under the jurisdiction of the U.S. Department of Labor's Office of Federal Contract Compliance Programs. Megaprojects are monitored by oversight committees comprised of community based organizations, government compliance officers, and contractors.

CONCLUSION

Tradesmen and tradeswomen cannot do their jobs when they lack the appropriate tools. Similarly, Proposition 209 has denied the California public sector a useful and valuable tool for equal employment opportunity—affirmative action.

Women have strived mightily to overcome substantial barriers to workplace equity in blue-collar industries. Over the past forty years, since the advent of affirmative action, limited advancements have been achieved. The number and percentage of women in construction jobs increased substantially during the 1970s, 1980s and early 1990s. When Proposition 209 passed in November 1996, however, not only did it mean the end of affirmative action hiring programs by state and local agencies, it severely weakened the slow but steady increase in the numbers of tradeswomen. This report has documented decreases in the number and percentage of women in the trades following the passage of Proposition 209 and described its consequences: recruiters not being able to place qualified tradeswomen applicants; employers resorting to traditional exclusionary hiring practices; and government agencies no longer monitoring employer practices or keeping records that would document progress or discrimination. While the percentage of women employed in California's construction industry rose 26% from 1990 to 1996, this percentage dropped 33% after the passage of Proposition 209.

Proposition 209 has harmed the livelihoods of women who have aspired to be tradeswomen and taken from them and their families the benefits of these well-paying job opportunities. It has also been interpreted by government officials as banning data collection. Consequently, neither advocates, researchers, government officials, or the general public are able to define the extent of the gap in job opportunities for tradeswomen and thus are less able to remedy discrimination. No more experience or experimentation with it is necessary to conclude that Proposition 209 is inconsistent with equal employment opportunities for women in the construction trades and should be repealed.