

Critically Analyze California's Proposition 16

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Introduction

California Proposition 16 was a 2020 legislative constitutional amendment that asked voters whether to repeal Article I, Section 31 of the California Constitution, the provision adopted through Proposition 209 in 1996. Section 31 prohibits the state from discriminating against or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, and public contracting. Proposition 16 would not itself have created a quota, admissions formula, hiring rule, or contracting preference. Its legal effect would have been to remove the state constitutional prohibition and restore authority for state and local entities to consider those characteristics to the extent permitted by federal and other state law. California voters rejected Proposition 16 in the November 3, 2020 election, so Section 31 remained in force. A careful analysis therefore needs to distinguish the measure's actual legal effect from the competing policy arguments made by supporters and opponents during the campaign (California Secretary of State, 2020).

The Case for Restoring Policy Flexibility

Supporters of Proposition 16 argued that formally neutral rules can preserve unequal outcomes when institutions inherit disparities in schooling, wealth, professional networks, contracting access, and prior discrimination. From this perspective, repealing Section 31 would have given public universities, employers, and contracting agencies additional tools to address documented underrepresentation or barriers. Supporters also argued that diversity can serve institutional goals when policies are designed lawfully and evaluate applicants or firms as more than a single test score, grade, or past contract history. Their position did not require the claim that every disparity proves intentional discrimination. Instead, it emphasized that government sometimes needs flexibility to consider how unequal opportunities shape competition. This rationale has to be understood alongside federal constitutional limits: even without Section 31, public entities would still have been subject to equal-protection doctrine, federal civil-rights statutes, and judicial review. Proposition 16 therefore concerned the range of policies California could consider, not an automatic mandate to award benefits on the basis of race or sex.

The Case for Government Neutrality

Opponents emphasized a different conception of equality: government should not classify or treat individuals differently because of race, sex, ethnicity, color, or national origin. They argued that even policies intended to remedy inequality can impose burdens on individuals who did not cause earlier discrimination, create stigma, or encourage institutions to treat people as representatives of groups rather than as individuals. Concerns about university admissions and public contracting were especially prominent because competitive opportunities are limited and decisions can be experienced as zero-sum. These objections deserve analysis without assuming that one racial group is naturally more qualified or deserving than another. Merit is rarely measured through one perfect indicator, and admissions, hiring, or contracting systems commonly combine multiple criteria. The strongest version of the opposition argument is therefore institutional rather than racial: direct government classification by protected characteristics creates constitutional and ethical risks, and policies addressing disadvantage should use criteria that are transparent, individualized, and closely connected to the purpose of the program.

Merit, Race-Neutral Alternatives, and the Current Legal Setting

The debate also illustrates why “merit” and “race-neutrality” need careful definition. Academic preparation, work experience, leadership, achievement relative to available opportunity, socioeconomic disadvantage, neighborhood conditions, first-generation status, school resources, and other factors can all be relevant depending on the institution’s goal. California public institutions developed race-neutral approaches after Proposition 209, including contextual review, outreach, financial aid, transfer pathways, and attention to socioeconomic or geographic disadvantage. Such policies can expand opportunity without directly classifying applicants by race, although they may produce different results from race-conscious programs. Federal law has also changed since the 2020 election. In 2023, the U.S. Supreme Court invalidated the race-conscious admissions systems at Harvard and the University of North Carolina in *Students for Fair Admissions*. Universities may still consider an applicant’s individual experiences, including experiences involving race, but they may not award a benefit simply because of racial status. Any contemporary discussion of Proposition 16 therefore has to separate the 2020 proposal from the legal environment that exists after that decision.

Algorithms Cannot Define Equality

Algorithms do not remove these normative choices. An admissions or hiring model applies criteria selected by people, and those criteria can reproduce inequality even when race is omitted. Heavy weighting of standardized tests, school resources, neighborhood characteristics, parental education,

work history, or prior institutional access may advantage some groups and disadvantage others. Conversely, explicitly designing an algorithm to reproduce population demographics would introduce its own legal and ethical questions. Statistical discrimination occurs when decision-makers use group averages or stereotypes as substitutes for individual evidence, while taste-based discrimination reflects prejudice or preference against a group. Both can operate through human judgment or automated systems. A fair process therefore requires validation of the criteria, review for disparate effects, explainability, and a meaningful opportunity to correct errors. Technology cannot decide what equality should mean; it can only operationalize values and rules supplied by institutions. The central policy question remains how public bodies can expand opportunity and address documented barriers without reducing individuals to racial or demographic categories.

Conclusion

Proposition 16 presented California voters with a genuine policy conflict between two approaches to equality rather than a simple contest between equality and discrimination. Supporters sought greater flexibility for public institutions to address underrepresentation and structural barriers, while opponents prioritized a constitutional rule against government preferences based on protected characteristics. The measure would have repealed Section 31 but would not itself have established quotas or guaranteed benefits to any group. Voters rejected it in 2020, leaving Proposition 209's constitutional language in place. Since then, the Supreme Court's 2023 admissions decisions have further limited the use of race in higher education, although individualized discussion of how race affected a person's life can still be considered within the Court's stated boundaries. The continuing analytical lesson is that policies should be evaluated through their actual text, legal constraints, evidence of the problem they address, and the way burdens and benefits are distributed. Describing applicants as inherently deserving or undeserving because of race obscures rather than clarifies the underlying policy dispute.

References

California Constitution, art. I, § 31.

California Secretary of State. (2020). *Proposition 16: Official Voter Information Guide*.

Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023).