

Critically Analyze California's Proposition 16

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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, admission formula, hiring preference, or contracting program. It would have removed the state constitutional prohibition and allowed state and local entities to consider protected characteristics to the extent permitted by federal and other state law. California voters rejected Proposition 16 in November 2020, so Section 31 remained in force. A critical analysis must therefore distinguish the proposal's legal effect from arguments made by supporters and opponents. (California Constitution, n.d.)

Point 1: The Policy Question

The central question was whether formally race-neutral rules were sufficient to address unequal outcomes created by past and continuing discrimination, or whether public institutions should regain limited authority to consider race, sex, ethnicity, color, and national origin. Supporters argued that Proposition 209 restricted efforts to promote diversity and remedy disadvantage in universities, employment, and contracting. Opponents argued that government should not treat individuals differently because of protected characteristics and warned that removing Section 31 could permit unfair preferences. Both positions invoke equality, but they define it differently. One emphasizes equal treatment without classification; the other emphasizes the need to address structural inequality and unequal access.

What Proposition 16 Would Have Changed

The official voter guide stated that a "yes" vote would allow state and local entities to consider race, sex, color, ethnicity, and national origin in public education, employment, and contracting, subject to federal and state law. A "no" vote would preserve the existing ban. The measure did not require any institution to adopt a race-conscious policy. It restored discretion that California public entities had lost in 1996. Any later policy would still have faced constitutional review, statutory limits, public oversight, and litigation. Describing Proposition 16 as automatically admitting unqualified students or assigning jobs by race exaggerates what the text itself did. (California Secretary of State, 2020a)

Historical Background: Proposition 209

Proposition 209 was approved in 1996 and became Article I, Section 31. It applied to public education, public employment, and public contracting. Supporters presented it as a civil-rights measure requiring government neutrality. Critics argued that it prohibited narrowly designed affirmative-action programs even when those programs sought to address exclusion. The legal text includes exceptions, including actions necessary to maintain eligibility for federal funding and certain sex-based qualifications reasonably necessary to normal public employment or operation. The history matters because Proposition 16 was a repeal proposal, not a new stand-alone system.

Advantages Claimed by Supporters

Supporters argued that public institutions should be able to respond more directly to underrepresentation and documented barriers. In higher education, they believed limited consideration of race and ethnicity could help create diverse learning environments and counter unequal access to advanced courses, counseling, test preparation, stable housing, and other resources. In public employment, they argued that recruitment and promotion systems may reproduce historical exclusion even without openly discriminatory rules. In contracting, they pointed to disparities in access to government business opportunities. Proposition 16 would have allowed agencies to design programs addressing these issues within federal limits.

Diversity as an Educational Interest

Diversity can expose students to different experiences and reduce the assumption that one social group represents a single viewpoint. However, racial identity cannot be used as a substitute for individual experience. Students within the same category differ by class, immigration history, language, region, ideology, and family background. A lawful and educationally sound policy should consider the whole person rather than treat race as a mechanical score. Since the U.S. Supreme Court's 2023 decision in *Students for Fair Admissions v. Harvard* and the companion UNC case, universities may not use the race-based admissions systems invalidated by the Court. Applicants may still discuss how race affected their lives, but institutions must evaluate the individual's experiences and qualities rather than award a benefit simply because of racial status.

Public Employment

Public employers have an interest in fair recruitment, equal opportunity, and a workforce capable of serving diverse communities. They may broaden outreach, remove unnecessary barriers, standardize interviews, audit promotion patterns, and provide lawful training without making decisions through racial stereotypes. Proposition 16 would have removed the state constitutional barrier to some forms

of consideration, but federal equal-protection and employment law would still have applied. No applicant would have become legally entitled to a job solely because of race or sex. Public employment decisions require job-related qualifications and individualized evaluation.

Public Contracting

Government contracting can be affected by access to capital, bonding, networks, prior experience, and the size of contracts. Supporters argued that businesses owned by women and racial minorities had fewer opportunities and that targeted programs could expand competition. Opponents worried that preference systems would disadvantage firms whose owners did not fall within designated categories or would benefit wealthy owners who had not personally experienced disadvantage. A well-designed contracting policy would need evidence of discrimination, clear objectives, limited duration, transparent eligibility, and periodic review. Broad racial assumptions are weaker than programs directed toward documented barriers.

Disadvantages Claimed by Opponents

Opponents feared that repealing Section 31 would permit the government to treat people as representatives of racial groups rather than individuals. They argued that preferences can create resentment, stigmatize beneficiaries, and disadvantage applicants who had no role in past discrimination. These concerns deserve serious attention. However, the original essay expresses them through the claim that a qualified White student would lose a seat to an “undeserving” Black student. That framing is discriminatory and assumes merit can be measured perfectly by grades or test scores while treating minority admission as evidence of lower qualification. Admission and hiring decisions normally involve multiple criteria, and no racial group is inherently more or less deserving.

Merit Is Not a Single Number

Merit may include academic preparation, achievement relative to available opportunity, work experience, service, leadership, creativity, resilience, and the requirements of a program. Standardized tests and grade-point averages can provide useful information, but they also reflect educational resources and are not complete measures of future contribution. This does not justify ignoring academic readiness. It means institutions should define criteria openly and evaluate whether each criterion is connected to legitimate goals. The strongest criticism of affirmative action is not that minority applicants are unqualified; it is that government classification by race carries constitutional and ethical risks and requires exceptional justification.

The “Mismatch” and Stigma Arguments

Some opponents argue that students admitted through preferences may enter institutions where they struggle academically, while beneficiaries may be viewed as less capable. Evidence and interpretations of mismatch are contested and vary by program. Stigma can also occur when observers assume every student from an underrepresented group received a preference, even when the student would have been admitted under any system. Policy analysis should examine retention, graduation, learning, and career outcomes rather than rely on stereotypes. Support services and honest academic advising are useful for all students.

Point 2: Taste-Based Discrimination

Taste-based discrimination occurs when a decision-maker acts on personal prejudice or preference against a group, even when the discrimination imposes a cost. In admissions, an officer biased against Asian applicants might interpret the same achievement less favorably, value certain personalities selectively, or apply vague criteria inconsistently. Proposition 16 would not have made such prejudice lawful. Government discrimination remains constrained by equal-protection principles and civil-rights laws. A policy intended to promote diversity cannot serve as a cover for hostility toward another group.

Statistical Discrimination

Statistical discrimination occurs when decision-makers use group averages or stereotypes as substitutes for individual information. An officer might assume an applicant is academically strong, disadvantaged, wealthy, quiet, or lacking leadership because of race or ethnicity. Even a stereotype that appears positive can harm individuals and distort evaluation. The original essay suggests that an officer favoring Asian students could use affirmative action to admit more Asians. This misunderstands the concept. Statistical discrimination is not simply favoring a group; it is relying on group-based assumptions instead of the applicant’s evidence. A fair process resists both negative and positive stereotypes.

Asian American Applicants and Coalition Politics

Proposition 16 generated significant debate among Asian American communities. Some organizations supported repeal because they viewed affirmative action as a tool against structural inequality. Others opposed it because they feared discrimination in selective admissions or objected to racial preferences. Treating “Asian” as one unified interest is itself misleading. The category contains many national origins, migration histories, languages, and socioeconomic conditions. Policy arguments should not use one minority group as proof that another group receives unfair advantage.

Point 3: Algorithms and Admissions

The original essay asks whether an admissions algorithm could make the racial composition of the University of California, San Diego resemble California's population. An algorithm cannot make institutional enrollment equal to state demographics without being designed toward that result, and demographic matching is not necessarily the correct objective. Applicants differ in age, preparation, geography, interest, program choice, and eligibility. UCSD is one campus within a statewide system, not a miniature population census. A composition difference does not by itself prove discrimination.

Algorithms Do Not Remove Human Values

An algorithm applies rules chosen by people. Designers select outcomes, data, weights, and thresholds. If an admissions model gives heavy weight to standardized tests, advanced courses, legacy-like advantages, neighborhood, school resources, or English-language background, it may reproduce inequality even without using race directly. If it is trained on past decisions, it may learn previous bias. Mechanical consistency can reduce one form of arbitrary judgment while making systemic bias harder to see. Algorithms should be audited for validity, disparate effects, data quality, explainability, and appeal procedures.

Native English and Proxy Variables

The original example gives extra weight to parents being native English speakers. Such a variable would likely favor families with longer U.S. residence and could disadvantage immigrants without demonstrating student ability. It might also act as a proxy for national origin. An admissions criterion should be connected to educational purpose and assessed for legal risk. If language proficiency is necessary, the institution should evaluate the applicant's own ability through appropriate evidence rather than infer it from parents.

SAT Scores and Unequal Opportunity

Standardized tests can compare students across schools, but performance is influenced by coursework, tutoring, income, disability accommodation, language, and familiarity with testing. Removing tests does not eliminate inequality because grades and extracurricular opportunities also reflect resources. The question is not whether one metric is perfectly neutral. It is whether the full system predicts success fairly and gives applicants meaningful opportunity to demonstrate readiness. Algorithms cannot answer that normative question independently.

Race-Neutral Alternatives

Institutions can pursue diversity through socioeconomic factors, geography, school context, first-generation status, obstacles overcome, transfer pathways, outreach, financial aid, and support for underserved schools. California universities developed race-neutral approaches after Proposition 209, including contextual review and outreach. Such policies can improve opportunity while avoiding direct racial classification, but they may not reproduce the same outcomes as race-conscious programs. Their effectiveness should be measured rather than assumed.

Individual Experience After *Students for Fair Admissions*

The Supreme Court's 2023 decision rejected the specific race-conscious admissions systems used by Harvard and UNC. The Court stated that universities may consider an applicant's discussion of how race affected life, provided the benefit is tied to the individual's character, courage, leadership, or other qualities rather than race itself. This distinction reinforces a useful principle for California: institutions can examine disadvantage and experience without treating racial identity as an automatic plus or minus. Legal interpretation remains complex, and public institutions must consult current law when designing policy. (*Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 2023)

The 2020 Election Outcome

California voters rejected Proposition 16 in the November 3, 2020 general election. As a result, the measure did not repeal Section 31. The current constitutional provision continues to prohibit state discrimination or preferential treatment based on race, sex, color, ethnicity, or national origin in the specified public sectors, subject to its text and applicable law. Analyses written as though Proposition 16 took effect are therefore inaccurate. (California Secretary of State, 2020b)

Why Voters May Have Rejected It

Voters could oppose the measure for different reasons: commitment to formal neutrality, distrust of government preferences, concern about university admissions, uncertainty about the measure's effects, or disagreement with its wording. Others may have supported diversity goals but preferred socioeconomic programs. Election results establish the legal outcome but do not reveal one shared motive. Claims about why millions voted a particular way require survey evidence rather than assumption.

Ethical Evaluation

The ethical tension is between individual equal treatment and corrective attention to unequal structures. A purely colorblind rule can overlook how historical and current practices shape opportunity. A group-conscious rule can reduce individuals to categories and distribute burdens to people who did not cause the injustice. The strongest policy seeks evidence, narrow design, transparency, individual assessment, and regular review. It should avoid quotas, stereotypes, and permanent entitlement while taking unequal access seriously. (Polonski, 2018)

Conclusion

Proposition 16 would have repealed California's state constitutional ban on considering race, sex, color, ethnicity, and national origin in public education, employment, and contracting, but it would not automatically have created quotas or guaranteed places to any group. Supporters viewed repeal as necessary to address underrepresentation and structural barriers. Opponents emphasized individual treatment and the danger of government preference. The original claims that Black or Latino beneficiaries would be undeserving and that White or Asian applicants would necessarily be displaced are unsupported and discriminatory. Taste-based and statistical discrimination can harm any group, while algorithms can reproduce bias through data and design. California voters rejected the proposition, leaving Section 31 in force. A sound approach to equality should combine lawful individual assessment with strong race-neutral efforts to expand opportunity and remove documented barriers.

References

California Secretary of State. (2020). *Proposition 16: Official voter information guide*.

California Secretary of State. (2020). *General election statement of vote, November 3, 2020*.

California Constitution, art. I, § 31.

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

Polonski, V. (2018). Why AI cannot solve everything. *The Conversation*.