

Prop. 16 will pave the way to goals that operate much like quotas

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Oct 14, 2020(CalMatters: <https://calmatters.org> Delivered by Newstex) In summary If Prop. 16 passes will racial and gender preferences go so far as to be indistinguishable from quotas. By Rick Sander, Special to CalMatters Rick Sander is an economist and Dukeminier Distinguished Professor of Law at UCLA, sander@law.ucla.edu.;Proponents of Proposition 16[1] describe the measure as making 'affirmative action' legal again.

Opponents say that Prop. 16 will institutionalize preferences, thereby legalizing racial discrimination and encouraging quotas. The fate of Prop. 16 very likely depends on which of these descriptions the average voter believes.Despite the claims of proponents, Prop. 16 is clearly not about affirmative action. Proposition 209, the 1996 measure that Prop. 16 seeks to overturn, did not mention affirmative action. Furthermore, after Prop. 209 passed, the University of California launched its largest, most ambitious, and most successful affirmative action initiative in its history precisely because of Prop. 209's mandate of race neutrality.Deprived of the ability to use racial preferences, UC leaders initiated dozens of outreach, partnership and tutoring programs whose main beneficiaries were Blacks and Hispanics, though they were not limited to those groups. UC expanded outreach to disadvantaged schools, made the application process easier, provided free test-prep services and even gave some preference to low-income applicants. Keep tabs on the latest California policy and politics news These outreach efforts worked: UC applications from Blacks tripled in the decade after Prop. 209; applications from Hispanics quadrupled. Hispanic high school graduation rates rose sharply. Both Black and Hispanics became better represented at UC, and they had much higher success rates once they arrived on campus.In other words, the measures adopted by UC to implement Prop. 209 truly leveled the playing field. They are what most people, including me, think of as legitimate and desirable affirmative action.Proponents of Prop. 16 ignore all of these accomplishments. They want Prop. 16 to be about 'affirmative action' rather than about preferences, discrimination and quotas because, in public opinion surveys, substantial majorities of voters favor 'affirmative action' in higher education, but equally large majorities disapprove of 'racial preferences in admissions,' and almost everyone is opposed to racial quotas. Most people understand racial preferences to mean applying different standards to different people based on their race. They recognize that this necessarily entails discrimination against whichever racial group that does not receive the preference. Allowing preferences, and discrimination, are the only substantive changes Prop. 16 would make to state law.An important question is, if Prop. 16 passes, whether racial and gender preferences will go so far as to be indistinguishable from quotas. Prop. 16 proponents point out, correctly, that the Supreme Court has declared racial quotas unconstitutional, and a few weeks ago the UC Regents, trying to shore up support for Prop. 16, formally declared that UC will not use quotas.But anyone who works in college admissions knows that the difference between aiming for a 'critical mass' of Group A (legal), and having a 'quota' for Group A (illegal), is largely a matter of semantics.I well remember a lunch, from pre-209 days, with a senior dean at UCLA and the school's top admissions officer. The dean told the admissions officer that he was doing a great job with the

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school's goals for minority admissions. 'But I noticed that you've been doing too well,' the dean said. 'You keep hitting the same number year after year. You need to mix it up a little.' In other words, don't make the quota too obvious. As another colleague observed to me, 'the difference between a quota and a goal is a wink.' Harvard University is currently defending itself against charges of discriminating against Asian Americans in admissions. Among other things, the plaintiffs have proven that in the three years before the case was brought, Harvard admitted exactly the same proportion of Black applicants as non-Black applicants, down to the hundredth of a percentage point, even though the qualifications of many admitted Black applicants were dramatically below those of rejected Asian Americans. Harvard insists that it was not using a quota, and a district court judge has agreed that Harvard was simply doing a good job of hitting its 'goal.' The Supreme Court may ultimately call Harvard to account, but the simple reality is that practices indistinguishable from quotas flourish at schools that allow racial preferences. Given the political pressures UC is under to achieve equal racial representation, regardless of individual student qualifications, there is little doubt that Prop. 16 will pave the way to 'goals' that operate much the same way as quotas. The shame in all this is that so few UC leaders have the courage to acknowledge how well race-neutrality has worked to improve outcomes for all groups at the university. _____ CalMatters Guide to the propositions: Proposition 16: Restoring affirmative action[2] Support in-depth reporting that matters As a nonprofit newsroom, we rely on the generosity of Californians like you to cover the issues that matter. If you value our reporting, support our journalism with a donation. [1]: [https://ballotpedia.org/California_Proposition_16,_Repeal_Proposition_209_Affirmative_Action_Amendment_\(2020\)](https://ballotpedia.org/California_Proposition_16,_Repeal_Proposition_209_Affirmative_Action_Amendment_(2020)) [2]: <https://calmatters.org/election-2020-guide/proposition-16-affirmative-action/>

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