



RESEARCH REPORT | Center for 1776

# BIDEN ADMINISTRATION POLICIES REPLACE EQUAL OPPORTUNITY WITH EQUITY & DISCRIMINATION

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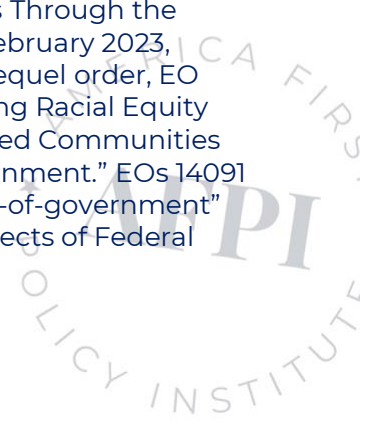
## TOPLINE POINTS

- ★ The Fourteenth Amendment to the Constitution requires the government to treat Americans equally. However, Biden’s “equity” executive orders call for using the immense power of the federal government to equalize outcomes across identity groups by replacing equality of opportunity with differential treatment based on race.
- ★ Many of the Biden Administration’s equity initiatives unconstitutionally discriminate. Federal courts have struck down many of them as illegally racially discriminatory.
- ★ These executive orders contravene America’s founding principles of freedom, equality, and the dignity of the individual. The government should protect equality of opportunity instead of seeking to impose equality of outcomes.

America was founded on the belief that everyone is created equal. This once-radical concept is deeply embedded into the fabric of American identity and is the foundation of America’s legal framework. The Constitution prohibits the U.S. government from racially discriminating against Americans, and federal civil rights laws protect equal opportunity for all Americans. The Supreme Court recently emphasized the strength of these protections when it struck down racially discriminatory admissions policies in higher education. Nonetheless, President Joseph Biden has abandoned equality of opportunity to instead make equity—the promotion of equal outcomes across identity groups through

differential treatment—a central focus of his administration.

The first executive order (EO) President Biden signed upon taking office was EO 13985 on “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” In February 2023, President Biden issued a sequel order, EO 14091, on “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” EOs 14091 and 13985 require a “whole-of-government” focus on “equity” in “all aspects of Federal decision-making.”



Biden's EOs effectively direct agencies to discriminate based on immutable characteristics such as race and sex to promote equality of outcomes. Such discrimination violates both the Fourteenth Amendment's Equal Protection guarantees and Titles VI and VII of the Civil Rights Act of 1964. Courts have already struck down multiple racially discriminatory Biden Administration policies. The administration is undermining the fundamental American principles that past civil rights activists like Martin Luther King, Jr. fought for by replacing equality of opportunity with equality of outcome.

### Constitution Protects Americans from State-Sanctioned Racial Discrimination

America was founded on the principles of equal rights and opportunity. The U.S. has realized this promise imperfectly, most notably with slavery and then Jim Crow laws. America has nonetheless made great progress toward these ideals, including the passage of the Fourteenth Amendment to the U.S. Constitution and the 1964 Civil Rights Act. The law now forbids both the government and corporations from discriminating against Americans based on their race or sex.

The Supreme Court recently reiterated that the Constitution and the law protect Americans from racial discrimination. Harvard and the University of North Carolina (UNC) used race as a factor in deciding which students to admit, penalizing Asian Americans and, to a lesser extent, Caucasians in admissions solely for their racial ancestry. In a 6-3 decision, the Supreme Court ruled on June 29, 2023, that such racial discrimination was illegal under the Civil Rights Act and unconstitutional under the Fourteenth Amendment ([Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 2023](#)).

The Court's ruling applied "strict scrutiny," which requires practices based on race to serve a compelling governmental interest and to be narrowly tailored. The Court found the universities' policies failed this test. Chief Justice John Roberts emphasized that race-based considerations in university

admissions must have an end point: "University programs must comply with strict scrutiny, they may never use race as a stereotype or negative, and—at some point—they must end" ([Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 2023, p. 22](#)).

### Equity vs. Equality

Despite America's historic ideals, many activists and some policymakers now advocate for replacing the ideal of "equality" with "equity." Although "equity" and "equality" sound similar, they have very different meanings. Equity means ensuring equality of outcomes, not equality of opportunity. As then-candidate, now-Vice President Kamala Harris explained, "There's a big difference between equality and equity. Equality suggests, 'Oh, everyone should get the same amount' ... Equitable treatment means 'we all end up at the same place'" ([Harris, 2020](#)). Similarly, Felicia Wong, the vice chair of the Treasury Department's Advisory Committee on Racial Equity, explains that "[t]rue equity means equity of outcome, and not accepting the promise of 'opportunity' within a system that continues to systematically exclude" ([Keene & Chasmar, 2022](#)).

The push for equity can be traced to critical race theorists who argued for the race-conscious redistribution of economic goods—from race preferences in employment decisions to reparations for slavery paid by taxpayers—as the only way to ensure the advancement of African Americans in a social and economic order they viewed as systemically oppressive. Neil Gotanda, one of the foremost critical race theorists, explained his "central claim" in a seminal article: "modern colorblind constitutionalism supports the supremacy of white interests and must therefore be regarded as racist" (Gotanda, 1995, p. 272).

Equity therefore requires embracing an "antiracism" framework, which has been promoted, most notably, by Ibram X. Kendi in recent years. Kendi argues that "[a]ny action that results in or maintains racial equity between racial groups is considered an antiracist policy" (Kendi, 2019, p. 17). Kendi



further calls for “antiracist” racial discrimination. He argues that “[t]he only remedy to racist discrimination is antiracist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination” (Kendi, 2019, p. 19).

Senior Biden Administration officials have publicly embraced Kendi and his antiracist philosophy.<sup>1</sup> President Biden has now expressly embedded equity considerations into every level of federal policymaking. Equity-based approaches often hurt the very populations they are intended to help ([Brewer et al., 2021](#)). Equity-based policies undermine traditional American principles of equal treatment before the law. They also reflect and reinforce the view that individuals should be judged primarily based on immutable characteristics such as skin color, rather than on the content of their character or their achievements.

### EOs Require Agencies to Focus on Equity

President Biden signed EO 13985 on his first day in office. The order required agencies to develop equity action plans and prioritize equity in their budget formulation and policy-making processes. The more recent EO 14091 now “extend[s] and strengthen[s] [these] equity-advancing requirements for agencies” ([Exec. Order 14091](#)). Key features of EO 14091 include:

- *Agency Focus on Equitable Outcomes.* EO 14091 makes promoting “equitable outcomes” a central focus for federal agencies. It directs federal agency leaders to use their “policy, budgetary, programmatic, service-delivery, procurement ... grantmaking, public engagement, research and evaluation, and regulatory functions to ... yield equitable outcomes for all Americans[.]” It requires agencies to submit annual “Equity Action

Plans” to the White House describing, and providing status updates on, agency “actions to advance equity.” And it requires agencies to incorporate “strategies to advance equity” into their strategic plans and senior executives’ individual performance plans ([Exec. Order 14091, § 3](#)).

- *Agency Equity Teams & White House Steering Committee.* The order further requires agency heads to create “agency equity teams” led by senior officials, including representatives from each major agency subcomponent. These teams will be responsible for “delivering equitable outcomes” and supporting “continued equity training and equity leadership development” for agency personnel. It also establishes a “White House Steering Committee on Equity” led by the director of the Domestic Policy Council to “coordinate Government-wide efforts to advance equity” ([Exec. Order 14091, § 2](#)).
- *Embedding Equity into Government-wide Processes.* The Office of Management and Budget (OMB) issues government-wide management directives for agency procedures, such as the processes for issuing grants or contracts or for contracting out services. EO 14091 directs OMB to update these directives to promote equity in agency decision-making ([Exec. Order 14091, § 4](#)).
- *Equitable Procurement.* The order also requires agencies to base procurement decisions in part on the demographic characteristics of business owners. It directs agencies to award at least 15 percent of their procurement dollars to businesses owned by “socially and economically disadvantaged individuals” ([Exec. Order 14091, § 7](#)).

### Equity Focus Promotes Discrimination

Smith, the special U.S. representative for racial equity and justice in the State Department has also met with Ibram X. Kendi and embraced his work ([Quinn, 2023](#)).

<sup>1</sup> The Director of the Office of Personnel Management (OPM) under the Biden Administration, Kiran Ahuja, has repeatedly endorsed Ibram X. Kendi’s racial theories ([Ahuja, 2018](#); [Simonson & Doyle, 2021](#)). Desiree Cormier



EO 14091, building on EO 13985, makes “equity” and “equitable outcomes” central decision-making criteria for federal agencies. Agencies now need to consider how potential decisions advance their equity goals, not just the mission of the agency. Agency leaders must regularly account for what they have done to promote equity.

This pressures agencies to make decisions based on race or other demographic characteristics in hiring, awarding grants, providing benefits, and virtually every other area of operations.<sup>2</sup> The EO effectively directs the federal government to stop treating Americans as individuals possessing equal rights and to instead systematically discriminate based on race or other demographic characteristics to equalize group outcomes. Agencies are interpreting the orders in exactly this way. Examples of the Biden Administration’s race-based agency decision-making include:

- *Grants.* The Department of Transportation (DOT) made “racial equity” a “consideration for awarding discretionary grants” in 2021 ([DOT Equity Action Plan, 2022, pp. 5,10](#)).<sup>3</sup> The Department of Energy (DOE) awarded a \$6.3 million grant to “advance equity” by training minority-owned businesses—and only minority-owned businesses—how to apply for DOE funding and access DOE programs ([U.S. Department of Energy, 2023](#)). The DOE has described the president’s EOs as a call “for a total transformation of the government into an entity that

centers the concerns of Black, Indigenous, and People of Color (BIPOC) and underserved communities” ([U.S. Department of Energy, n.d.](#)).

- *Homeowner Assistance.* The Treasury Department has issued equity guidance for distributing the \$10 billion in the Homeowner Assistance Fund (HAF), established under section 3206 of the American Rescue Plan Act of 2021. This guidance prioritizes “socially disadvantaged individuals”—described as including members of groups that have experienced racial or cultural prejudice and residents of majority-minority Census tracts—for assistance ([U.S. Department of the Treasury, 2023, p. 2](#)).

The Biden Administration also tasked the Federal Housing Finance Agency (FHFA) with addressing the racial disparity in homeownership. The FHFA has responded by introducing initiatives involving Fannie Mae and Freddie Mac, which are aimed at advancing housing “equity” and involve providing race-based subsidies ([Federal Housing Finance Agency, 2022](#)). Fannie Mae has created “Special Purpose Credit Programs” that enhance credit access and homeownership opportunities specifically for African Americans. Some of these programs expressly condition eligibility on participants’

<sup>2</sup> EO 14035, *Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce*, requires the advancement of diversity, equity, inclusion, and accessibility in the federal workforce to “address the needs of many communities who may be underserved in the federal workforce” ([The White House, 2021](#)). For example, the State Department is “[e]stablishing the advancement of DEIA as an element for all employees as part of their job performance criteria, career advancement opportunities, and senior performance pay” ([U.S. Department of State, 2022](#)). DEI will now be integrated into the performance evaluations of

senior executives, while the equity teams will support ongoing training and development in equity and leadership for employees at all levels of the agency’s workforce.

<sup>3</sup> DOT Secretary Pete Buttigieg has claimed that America’s roads were designed to create “racial disparities” and that racial minorities are much more likely to die due to “the ways roads are designed,” reflecting the basis for the Department’s current equity injection into its *Safe Streets and Roads for All* (SS4A) grants program ([Schwartz, 2023](#)).



race ([Federal Housing Finance Agency, 2023, pp. 23, 38](#)).<sup>4</sup>

- *Civil Rights Enforcement.* At the end of the Trump Administration the Department of Education's Office of Civil Rights (OCR) preliminarily determined that the Evanston/Skokie School District 65 in Illinois violated Title VI of the Civil Rights Act by engaging in racial discrimination and creating a racially hostile learning environment ([Ashley, 2021, p. 2](#)). The district had created segregated "racial affinity groups" and teacher training programs, made race an explicit factor in student discipline, and taught white students that they enjoyed racial privilege ([Deemar v. Board of Education of the City of Evanston/Skokie et al., 2021, pp. 6,14-25](#)). However, OCR suspended the charges against the district after President Biden issued EO 13985 ([Campanile, 2021](#)).
- *Healthcare.* The Department of Health and Human Services has issued regulations giving healthcare providers higher Medicaid and Medicare reimbursement rates if they adopt "anti-racism" plans ([CY 2022 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies, 2021](#)). A coalition of physicians opposed to the

rule argues it encourages doctors to "consider race as the primary factor in care over individualized medical treatment" ([Do No Harm, 2022](#)).<sup>5</sup>

The Biden Administration's equity agenda disregards the principles of administrative impartiality and equality before the law, as it places race at the core of government decision-making. This is an abrupt departure from the principle that the government should not discriminate against Americans based on their race. Many of the Biden Administration's equity policies are accordingly legally suspect.

### Illegal Discrimination

As the Supreme Court's recent ruling on college admissions made clear, discrimination based on demographic characteristics—like race or sex—remains generally illegal under the Civil Rights Act (1964), no matter the motivation. The Fourteenth amendment also generally makes it unconstitutional for the government to deny citizens the equal protection of the law based on their race or sex. The president can issue executive orders guiding his subordinates' execution of the law, but those orders must comply with the Constitution and applicable laws. Accordingly, the Biden Administration has been sued frequently over discriminatory equity-based policies. Courts have repeatedly struck down these policies as unconstitutional racial

<sup>4</sup> These programs offer subsidized down payments, reduced loan fees, and support for lowering closing costs.

<sup>5</sup> A federal judge in Mississippi has ruled that a civil rights lawsuit against Secretary of HHS Xavier Becerra and Centers for Medicare and Medicaid Services (CMS) Administrator Chiquita Brooks-Lasure, challenging a Biden-era rule enabling higher compensation for doctors adopting an "anti-racism" plan, can proceed ([Colville et al. v. Becerra et al., 2023, p. 2](#)). The first pillar of the CMS strategic plan is "health equity" ([Centers for Medicare & Medicaid Services, 2022](#)). The judge's order indicates that the plaintiffs have presented plausible allegations that the rule is illegal because it lacks authorization from the Medicare statute

([Colville et al. v. Becerra et al., 2023, p. 45](#)). The lawsuit, supported by Do No Harm and initiated in May 2022 by Dr. Amber Colville and eight states, argues that the HHS rule violates the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) by promoting race-based decision-making in medical care without medical justification. CMS offers higher compensation to doctors with an "anti-racism" plan, impacting their score under Merit-based Incentive Payment System (MIPS), which determines Medicare payments ([Colville et al. v. Becerra et al., 2023, p. 2](#)). The case will continue in the United States District Court for the Southern District of Mississippi Gulfport Division.



discrimination. For example:

- *COVID Economic Relief for Restaurants Based on Skin Color.* The ARP prioritized minority and women-owned restaurants for COVID relief aid, denying access to aid to affected restaurants based solely on their owners' race or sex ([Small Business Administration Restaurant Revitalization Funding Program Guide, 2021, pp. 15, 22](#)).<sup>6</sup> This led Antonio Vitolo to sue the Small Business Administration (SBA) for racial discrimination. Vitolo, a white man, co-owned a restaurant with his Hispanic wife. Their restaurant was badly hurt by the pandemic. Under SBA rules, their restaurant would have been eligible for aid if his wife owned 51 percent of it. But because they owned the restaurant equally, they were denied aid.<sup>7</sup> The Sixth Circuit Court of Appeals found that this race-based policy constituted illegal racial discrimination and ordered the Biden Administration to cease the consideration of the plaintiff's race or sex in his grant application ([Vitolo v. Guzman, 2021, p. 4-15](#)). Similarly, in *Greer's Ranch Café v. Guzman*,

a white male plaintiff sought constitutional relief from this ARP provision. A federal judge ruled that this policy was discriminatory and ordered the SBA assistance program to stop discriminating on the basis of race and sex ([Greer's Ranch Café v. Guzman, 2021, p. 17](#)).<sup>8</sup>

- *COVID-19 Treatments Allocated Based on Race.* Under the Biden Administration the Food and Drug Administration (FDA) recommended states use race and ethnicity as factors for prioritizing access to COVID-19 treatments, such as monoclonal antibodies ([U.S. Food and Drug Administration, 2021, pp. 4, 8](#)).<sup>9</sup> Drawing on this guidance, Minnesota issued guidelines directing medical professionals to give non-whites priority access to the antibodies. Under Minnesota's guidelines, BIPOC status alone (black, indigenous, and persons of color) gave a patient equal priority with a non-BIPOC patient who was a senior citizen or had a history of heart disease.<sup>10</sup> The state explained that "FDA's

<sup>6</sup> The Small Business Administration issued a press release announcing that it had already received 147,000 applications from women, veterans, and socially and economically disadvantaged business owners, requesting a total of \$29 billion in relief funds ([U.S. Small Business Administration, 2021](#)). This raises the possibility that the entire \$28.6 billion that Congress allocated to the Restaurant Revitalization Fund would be depleted before non-minority males such as Mr. Greer could be considered for relief.

<sup>7</sup> Antonio Vitolo, a white man, and his Hispanic wife each owned 50% of their restaurant, Jake's Pub and Restaurant. Jake's Pub closed during the pandemic and served to-go orders on weekends. Sales dropped and workers left. Vitolo applied for the SBA's Restaurant relief program but was rejected and informed that he had to be "socially and economically disadvantaged" to achieve priority status as the restaurant was not 51% owned by a racial minority or a woman ([Vitolo v. Guzman, 2021, p. 2-3](#)).

<sup>8</sup> In its ruling, the court found that plaintiff was "experiencing race and sex discrimination at the hand of government officials" when the agency

denied Greer's request and acknowledged that Greer's Ranch Café lost nearly \$100,000 due to the COVID pandemic ([Greer's Ranch Café v. Guzman, 2021, pp. 8,15](#)).

<sup>9</sup> COVID-related recommendations issued by HHS and the FDA recommended healthcare professionals give racial and ethnic minorities priority when disseminating COVID therapies. These recommendations are in line with EO 13995 of January 21, 2021, "Ensuring an Equitable Pandemic Response and Recovery" Section 3: "Ensuring an Equitable Pandemic Response. To address the inequities identified in section 1 of this order, it is hereby directed that: (a) (ii) assess pandemic response plans and policies to determine whether personal protective equipment, tests, vaccines, therapeutics, and other resources have been or will be allocated equitably."

<sup>10</sup> Minnesota prioritized monoclonal antibody access by assigning patients points for various risk factors. Only patients with at least 4 points were assured access to the antibodies. Points were assigned as follows: "on a scale of 0-25: age 65 years and older (2 points), BMI 35 kg/m<sup>2</sup> and higher (2), diabetes mellitus (2), chronic kidney disease (3),



acknowledgment means that race and ethnicity alone, apart from other underlying health conditions, may be considered in determining eligibility for [monoclonal antibodies]" ([Minnesota Department of Health, 2022, pp. 8, 13](#)). Minnesota dropped these racial preferences shortly after they were threatened with litigation if they did not do so ([Boyer, 2022](#)).

- *Minority Business Development Agency.* The Minority Business Development Agency (MBDA) offers benefits and resources to businesses based on their owners' race or ethnicity. In November 2021, President Biden signed the Infrastructure Act, permanently authorizing and expanding the MBDA ([Infrastructure Investment and Jobs Act, 2021, Sec. 1445-1467](#)) ([15 U.S.C. § 9502\(a\)](#)). The Act creates a Business Center Program within the MBDA that provides technical assistance and business development services exclusively to minority-owned businesses ([15 U.S.C. § 9523\(a\)](#)). In response, three small business

cardiovascular disease in a patient 55 years and older (2), chronic respiratory disease in a patient 55 years and older (3), hypertension in a patient 55 years and older (1), and immunocompromised status (4), pregnancy (4), or BIPOC status (2)" (emphasis added) ([Minnesota Department of Health, 2022, p. 8](#)).

<sup>11</sup> One of the plaintiffs, Christian Bruckner, a disabled Romanian immigrant and business owner in Florida, contacted the MBDA for federal assistance but was informed that the agency primarily focuses on aiding businesses owned by ethnic minorities. As a result, he was referred to a private company where he would have had to pay for assistance ([Nuziard et al. v. Minority Business Development Agency et al., 2023, pp. 3-4, 13-14](#)).

<sup>12</sup> An example of the Biden Administration expanding an existing discriminatory policy is the Section 8(a) Business Development Program, overseen by the Small Business Administration. This rule reserves a portion of government contracts for "disadvantaged" companies. The rule presumes that members of certain racial and ethnic groups are automatically socially disadvantaged, namely Black Americans, Hispanic

owners in Texas, Wisconsin, and Florida filed a lawsuit challenging the program's constitutionality. The plaintiffs, who were denied MBDA services solely because of their race and ethnicity, argued that the program violates the Equal Protection clause by discriminating against individuals based on race. ([Nuziard et al. v. Minority Business Development Agency et al., 2023, pp. 2-3](#)).<sup>11</sup> The U.S. District Court for the Northern District of Texas issued a preliminary injunction against the agency. The court ruled that MBDA's racial eligibility criteria were unconstitutionally discriminatory and ordered the agency to stop using them ([Nuziard et al. v. Minority Business Development Agency et al., 2023, pp. 1, 14](#)).

The Biden Administration has prioritized equity over legal equality, in the process engaging in widespread racial discrimination in violation of Americans' constitutional rights. The administration has repeatedly established new initiatives or expanded existing policies that distribute benefits and burdens based on race.<sup>12</sup>

Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans, and others designated by the SBA ([Ultima Services Corporation v. U.S. Department of Agriculture et al., 2023, p. 8](#)). Applicants who don't belong to a preferred racial group are required to provide substantial evidence of a social disadvantage to even be considered ([Ultima Services Corporation v. U.S. Department of Agriculture et al., 2023, p. 8](#)). The Biden Administration has substantially expanded the 8(a) program, with SBA planning to increase its "socially disadvantaged businesses" contracting goal to 15% by FY 2025 ([U.S. Small Business Administration, 2022, p. 8](#)). Furthermore, the SBA will include an equity impact assessment in the 8(a) application requirements ([U.S. Small Business Administration, 2022, p. 9](#)). The 8(a) program has also been found to be unconstitutionally racially discriminatory. Ultima Services Corp. (Ultima), owned by Celeste Bennett, filed suit against the 8(a) rule. Ultima had previously won federal contracts with the Natural Resources Conservation Service (NRCS) but lost eligibility for federal contracts due to the USDA's recent shift to requiring sole-source contracts be reserved exclusively for 8(a) program participants ([Ultima Services Corporation v. U.S. Department of](#)



## Americans Widely Support Equality of Opportunity and Oppose Equity

Racial discrimination to promote equity is not only illegal; it is also highly unpopular. Americans widely support equality of opportunity over equity. In one recent survey, 72% of U.S. voters agreed that “equality of opportunity is a fundamental American principle, equality of outcome is not.” Large majorities of every racial and ethnic group agreed with this view, including 63% of Hispanic voters and 58% of African Americans. Only 13% of American voters disagreed ([Rasmussen, 2021](#)). A different pollster asked this question of voters in Massachusetts—one of America’s most liberal states. Bay State voters agreed equality of opportunity is a fundamental principle, but equality of outcome is not by a 61% to 15% margin ([Princeton Research Associates, 2022](#)).

Polling shows about three-fifths of Americans favor “affirmative action” to help minorities get ahead ([Saad, 2021](#)). But Americans overwhelmingly oppose doing so through racial preferences or discrimination. For example, three-quarters of Americans—including large majorities of every racial and ethnic group—believed race and ethnicity should not be a factor in college admission decisions ([Gomez, 2022](#)).

California voters recently demonstrated the widespread nature of the American consensus against racial preferences and discrimination.

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[Agriculture et al., 2023, pp. 2-3, 10](#)). *Ultima*, being owned by a white woman, argued that this practice of awarding contracts based on race was unconstitutional ([Ultima Services Corporation v. U.S. Department of Agriculture et al., 2023, pp. 4, 8](#)). On July 19, 2023, a federal district court judge found the race-based presumption in the SBA’s 8(a) program, which favors companies based on race without conducting a meaningful inquiry into an applicant’s background, to be an unconstitutional violation of the Fifth Amendment right to equal protection under the law ([Ultima Services Corporation v. U.S. Department of Agriculture et al., 2023, pp. 40-41](#)). The district court ordered the SBA to cease using the rebuttable presumption in administering the 8(a) program ([Ultima Services](#)

In 1996 California voters adopted Proposition 209, a state constitutional amendment prohibiting the state and local governments from discriminating against or granting preferential treatment to individuals based on race or sex. In 2020 the California legislature proposed Proposition 16. That ballot initiative would have repealed Prop 209 and allowed the government to discriminate to promote diversity. Prop 16 supporters outspent opponents by 15 to 1. Nonetheless, California voters rejected the proposal by 14 percentage points ([Ballotpedia, 2020a](#)). The same California voters chose the Biden-Harris presidential ticket over the Trump-Pence ticket by a nearly two-to-one margin, one of the Biden campaign’s largest margins of victory ([Ballotpedia, 2020b](#)).<sup>13</sup> Voters in liberal California overwhelmingly opposed treating Americans differently based on their race.

## Conclusion

America was founded on the principles of equality and freedom. The founders, as well as Abraham Lincoln, Martin Luther King Jr., and countless other Americans fought to defend these ideals. Executive Orders 13985 and 14091 reject these foundational principles in favor of equity—discrimination based on immutable characteristics to equalize group outcomes. These presidential directives direct federal agencies to systematically treat Americans differently based on their race and sex. These orders are in considerable tension with constitutional and statutory prohibitions on racial and sexual discrimination. The courts

[Corporation v. U.S. Department of Agriculture et al., 2023, p. 40-41](#)).

<sup>13</sup> Only four states gave the Biden-Harris campaign a larger margin of victory in the 2020 election: Hawaii, Maryland, Massachusetts, and Vermont. The ‘Yes on 16’ campaign benefited from a 16 to 1 financial advantage, the backing of the entire California political, corporate, and media establishment, and the endorsements of numerous prominent Americans, including then-Democratic vice presidential contender Kamala Harris, House Speaker Nancy Pelosi, California Governor Gavin Newsom, and Senator Bernie Sanders ([Connerly, 2020](#); [This Nation Staff, 2021](#)).





have struck down numerous Biden Administration equity initiatives for being illegally discriminatory.

Sixty years ago, Martin Luther King Jr. stood before Americans and proclaimed: “I have a dream that one day this nation will rise up and live out the true meaning of its creed: We hold

these truths to be self-evident, that all men are created equal ... I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.” The Biden Administration’s equity policies reject this vision, instead treating Americans unequally based on their race to equalize group outcomes.

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