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NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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By Any Means Necessary, et al, Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

C10-00641

ADR

COALITION TO DEFEND AFFIRMATIVE ACTION,
INTEGRATION AND IMMIGRANT
RIGHTS AND FIGHT FOR EQUALITY BY
ANY MEANS NECESSARY (BAMN), DEFEND
AFFIRMATIVE ACTION PARTY (DAAP),
ISSAMAR CAMACHO, JEREMY BAMIDELE, MARIA
BELMAN, JONATHAN BROOKS, CHRISTIAN IVAN
BURGOS, MAYRA CASILLAS, BIANCA CENTENO,
CALVIN JEVON COCHRAN, ADAN DE LA CRUZ by his
next friend LUIS DE LA CRUZ, VERONICA DONERSON,
OMAR SERAG ELDIN by his next friend GAMIL SERAG
ELDIN, JOSE FLORES, MICHELLE FLORES by her next
friend VICTORIA BARRANCO, JENESIS FONSECA by
her next friend ANGELICA LEDEZMA, GABRIELA
GALICIA, ILIANA GALLAGA, JOSE GARCIA, JOSE
GARCIA, MIYUKI GOMEZ by her next friend ROSA
MARIA GOMEZ, PATRICIA GONZALEZ, ANTHONY
KEOKI GRACIA, RABIAH HARRISON, ROSE ANITA
HERNANDEZ, ZAIRA HERNANDEZ, DANIEL DE
JESUS HERRERA, BRENDA IGLESIAS, JESSICA
JIMENEZ, SARAH KIM, DOMINIQUE LOFGREN,
ANTONIO LOVE, NAYELI A. MARAVILLAS by her next
friend MARTIN MARAVILLAS, GABRIELA MARTINEZ
by her next friend DORA MARTINEZ, JAVIER MEZA,
GLADYS MORALES by her next friend ROCIO
MORALES, JALIMA MORALES, AISLYN T.
NAMANGA, HAN KYUL NOH by his next friend LUCIA

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
(CLASS ACTION)

1 NOH, NICHOLAS OGBUEHI, AURIA PEREZ, MARIA
 2 ELENA POLANCO by her next friend ADELA
 3 SANTIBANA, JAPHINMA POWER, MERARI RAMIREZ,
 4 NANCY J. RODRIGUEZ by her next friend LUCIA
 5 CASTILLO, AARON SAMPSON, ANDREW SANCHEZ,
 6 DOMINIQUE SHORT-THOMAS, ALEJANDRA SOLIS by
 7 his next friend ROSA DESORMAUX, DESIREE
 8 TIENTURIER, JASMINE TOVAR by her next friend LUZ
 9 TOVAR, BRENDA TRUJILLO, JOSE ROBERTO
 10 VALENZUELA, RUBY VILLARRUEL by her next friend
 11 OLIVIA VILLARRUEL, JERRICA WEBB, TANISHA
 12 WEST, AMBER WILLIAMS by her next friend
 13 CARLETTE KING-WILLIAMS, RICARDO ZAZUETA

14 Plaintiffs,

15 vs.

16 ARNOLD SCHWARZENEGGER, in his official capacity
 17 as Governor of the State of California,
 18 REGENTS OF THE UNIVERSITY OF CALIFORNIA,
 19 and MARK YUDOF, in his official capacity as
 20 President of the University of
 21 California,

22 Defendants.

23 **PLAINTIFFS' COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**
 24 **(CLASS ACTION)**

Pursuant to the Federal Rules of Civil Procedure, the plaintiffs, by and through their attorneys, Scheff, Washington and Driver, P.C., state as follows:

INTRODUCTION

1. In spring 2006, the Latina/o communities poured into the streets demanding freedom and an end to second-class treatment. Two-and-a-half years later, this new civil rights movement inspired the election of the nation's first black president. Now, young leaders of the 2006 walkouts attend the University of California and are leading a revived student movement that is fighting against education cuts and for equal opportunities for

1 minority and undocumented immigrant students, demanding that the University rise to
2 its public mission and serve all the people of California.

3 2. The plaintiff Latina/o and black students now ask this Court to strike down Proposition
4 209's ban on affirmative action at the University of California because Proposition 209
5 has been the sentry at the gate, denying the plaintiffs the chance for an equal and
6 integrated education as promised by the Fourteenth Amendment, *Brown v. Board of*
7 *Education*, and the proudest legal traditions of California and of the nation.

8 3. Proposition 209 was an imposition of power by an electorate that was still in its majority
9 white in a state where the population was rapidly changing.

10 4. Proposition 209 passed in 1996 simply and solely because the white majority electorate
11 overrode the overwhelming opposition of the Latina/o, black, Native American and
12 Asian voters.

13 5. Proposition 209 promised a "color-blind" Constitution. But this was and is a lie.

14 6. Proposition 209 has created a racial caste system in which the state's most prestigious
15 schools train mostly white students and students from some Asian backgrounds while
16 admitting Latina/o, black and Native American students at only a third of their presence
17 among the high school graduates of the state.

18 7. As demonstrated by the UC's own figures, the proportion of Latina/o, black, and Native
19 American students is falling further and further behind the proportion of those students
20 among high-school graduates (Ex 1-3).

21 8. The small proportion of Latina/o, black and Native American students at UC's flagship
22 Berkeley campus, as compared to the state population, is matched only at the flagship
23 universities of the Deep South states of Louisiana, Mississippi, Alabama, Georgia and
24 South Carolina (Ex 4A-4B).

- 1 9. Even for those few Latina/o, black, or Native American students who have run the
2 gauntlet and secured admission to the UC, Proposition 209 has increased racial isolation
3 and racist hostility—profoundly distorting their experience and lessening their chances
4 of attending the UC’s graduate and professional schools.
- 5 10. The UC has, to its credit, attempted to mitigate the effects of Proposition 209—such as
6 considering socioeconomic class, using comprehensive file review, admitting the top 4
7 percent of every high school, varying the weight of tests and other admissions criteria,
8 considering the opportunities available at one’s high school, etc.—but in report after
9 report, the UC has shown that none of these measures can halt the fundamental trend
10 toward resegregation if Proposition 209 remains in effect and affirmative action remains
11 banned.
- 12 11. In Count One, the plaintiffs assert that Proposition 209 violates the Fourteenth
13 Amendment by forcing minority students and their supporters to sponsor an onerous and
14 almost certainly futile statewide referendum in order to secure the adoption of lawful
15 affirmative action programs. Every other group, however, retains the right to secure a
16 change in admission policies that are in its members’ interest by a simple majority vote
17 of the Regents or their subordinate bodies. By mandating separate and unequal
18 procedures for underrepresented minority students for the adoption of admission
19 policies, Proposition 209 violates the Equal Protection Clause in the most literal and
20 fundamental sense.
- 21 12. In Count Two, the plaintiffs assert that Proposition 209 also violates the Equal
22 Protection Clause because it was specifically intended to decrease or hold down
23 Latina/o, black and Native American enrollment (a) by substantively prohibiting the UC
24 from pursuing racial integration and diversity—while allowing it to pursue every other

1 form of integration and diversity, (b) by prohibiting the UC from taking account in
 2 admissions of the massive educational inequality due to race—while allowing it to take
 3 account of every lesser form of educational inequality; and (c) by legally requiring the
 4 University to apply its existing admission criteria in rigid ways that reflect and magnify
 5 de facto segregation and inequality in elementary and secondary education.

6 13. Indeed, Ward Connerly, the prime sponsor of Proposition 209, has finally admitted
 7 under oath that his goal was that Proposition 209 would administer the “tough love” that
 8 minority students supposedly needed in order to force them to work hard enough order
 9 to secure admission on “their own merits”—that is, according to merit as determined by
 10 a system that Connerly himself admits both incorporates and magnifies the unequal
 11 nature of elementary and secondary education.¹

12 14. Thirteen years ago, this Court rightly struck down Proposition 209 because it violated
 13 the Fourteenth Amendment by imposing a separate and more onerous political
 14 procedure on Latina/o, black and Native American residents. *Coalition for Economic*
 15 *Equity v. Wilson*, 946 F. Supp. 1480 (N.D.Calif.1996).

16 15. However, a panel of the Ninth Circuit reversed and upheld Proposition 209 on the basis
 17 of a supposed factual finding—in reality an ideological assumption—that the fight for
 18 affirmative action was not entitled to equal political procedures because it was a fight for
 19 “racial preferences,” not a fight against racial discrimination. *Coalition for Economic*
 20 *Equity v. Wilson*, 110 F.3d 1431 (9th Cir. 1997), *cert. den.* U.S. (1997).

21
 22
 23 ¹ “I knew that, but I also knew that the only way we’re going to close this academic gap between
 24 black and Latino on the one hand and Asian and white on the other, is not to keep papering over
 it with preferences, but to apply the tough love that’s necessary to get black and Latino students
 up to the bar. That was a value judgment then, it’s a value judgment now.” (Dep of Connerly, p.
 120.)

1 16. This rationale by the *Wilson* panel echoed the claims of racists from President Andrew
2 Johnson through the Southern segregationists—who have always falsely attempted to
3 label steps toward equality as preferences.

4 17. But the Ninth Circuit, with five justices dissenting in support of the district court, denied
5 rehearing without opinion. *Id.*

6 18. The Supreme Court, which was at that time declining the writ in all cases involving
7 affirmative action in higher education, denied certiorari in *Wilson* as well. *Id.*

8 19. There is not now, and never has been, any *factual* support for the *Wilson* panel's central
9 *assumption* that the fight for affirmative action was a fight for racial preferences rather
10 than a fight against racial discrimination.

11 20. As was true in 1996 and is even truer today, the first of the UC's two central admission
12 criteria—grade point averages adjusted upward to account for honors and AP courses—
13 reflects the separate and distinctly unequal elementary and secondary education
14 provided to Latina/o, black and Native American students.

15 21. As was true and as is even truer today, the UC's other crucial admission criterion—
16 standardized test scores—both reflect and vastly magnify the effects of de facto
17 segregation and inequality in a myriad of ways that derive from racial discrimination
18 and segregation.

19 22. As any fair factual record compiled in this case could demonstrate, the *Wilson* panel
20 wrongly assumed that the existing admission criteria are “racially neutral,” wrongly
21 labeled the fight for affirmative action as a fight for “preferences,” and wrongly failed to
22 recognize that affirmative action was simply a demand for relief from the otherwise
23 overwhelming preferences that white students and students from some Asian
24 backgrounds otherwise received.

1 23. Just as the *Wilson* panel's factual assumptions are irreconcilable with reality, its legal
2 conclusions are irreconcilable with what are now the clearly governing standards
3 established in *Grutter v. Bollinger*, 539 US 306 (2003).

4 24. In *Grutter*, the Court held that for many selective universities, affirmative action
5 programs were the only practical means to further the *compelling national interest* of
6 ensuring that the "path to leadership is visibly open to talented and qualified individuals
7 of every race and ethnicity." *Id.* at 332-33.

8 25. The *Wilson* panel's central legal foundation—the claim that affirmative action was not a
9 means of ending racial exclusion—is today utterly irreconcilable with the ringing
10 conclusions set forth in *Grutter*.

11 26. Similarly, the *Wilson* panel's central assertion that affirmative action in higher education
12 is "barely tolerated" by the Fourteenth Amendment is utterly irreconcilable with *Grutter*.

13 27. Moreover, as California Attorney General Jerry Brown has stated, the *Wilson* panel's
14 assertion that it can prohibit the right to fight for *all* affirmative action plans because
15 some of them may be unlawful is an assertion of states' rights that is utterly
16 irreconcilable with federal supremacy in general and with the Fourteenth Amendment in
17 particular.

18 28. Finally, as is now clear, the central legal premise for the *Wilson* panel decision—the
19 state's alleged right to establish a "color-blind Constitution" in all circumstances—is
20 absolutely irreconcilable with later Supreme Court decisions holding that the theory of
21 the "color-blind" Constitution "*cannot be a universal constitutional principle*" because it
22 is *inconsistent* with the "history, meaning and reach of the Equal Protection Clause."
23 *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701,
24 782-83, 788 (2007)(Kennedy, J).

- 1 29. *Grutter* and *Parents Involved* both recognize that de jure segregation is dead, that
2 massive de facto segregation remains, and that state and local governments must be able
3 to take action to overcome de facto discrimination—including by taking, in the
4 circumstances defined by federal law, racially conscious action to overcome it where
5 there are no other practical means for doing so.
- 6 30. Proposition 209's Tuskegee-like experiment in the so-called "color-blind" constitution
7 cannot change that reality—it can only make it far worse.
- 8 31. The UC Regents have therefore repealed their resolutions, sponsored by Connerly,
9 which proclaimed a color-blind policy in admissions.
- 10 32. Many top UC officials have called for the repeal of Proposition 209.
- 11 33. The Attorney General has informed the California Supreme Court that Proposition 209
12 violates the Fourteenth Amendment.
- 13 34. But Proposition 209 continues to hang by the thread of the *Wilson* panel decision.
- 14 35. Just as *Plessy's* formula of "separate but equal" provided an increasingly threadbare
15 justification for the de jure segregation in the South, the color-blind constitution
16 provides an increasingly untenable "justification" for the de facto segregation in the
17 University of California.
- 18 36. Just as the nation would have been spared untold suffering if *Plessy* had been overruled
19 13 years after it was decided, California and the nation would be spared untold suffering
20 if the *Wilson* panel decision is abandoned today.
- 21 37. The students ask this Court to strike down Proposition 209's ban on affirmative action in
22 the UC system because it is utterly irreconcilable with reality, with *Brown*, with *Grutter*
23 and with the proudest legal traditions of California and the United States.
24

1 38. The students ask this Court to strike down the old doctrine of *Plessy* that has resurfaced
2 in the new guise of Proposition 209 so that they can receive the equal and integrated
3 education that Linda Brown and so many others have fought and died for.
4

5 JURISDICTION AND VENUE

6 39. This is a claim made under the Fourteenth Amendment to the U.S. Constitution and
7 under 42 USC s. 1983. This Court has subject matter jurisdiction under 28 USC s. 1331
8 and 28 USC s. 1343(3).

9 40. The United States District Court for the Northern District of California is a proper venue
10 for this action because a substantial part of the events giving rise to this action occurred
11 in that district.
12

13 INTRADISTRICT ASSIGNMENT

14 41. A substantial part of the events which give rise to this claim occurred in Alameda
15 County, making assignment to the San Francisco or Oakland Division appropriate under
16 Civil L.R. 3-2(d).
17

18 PARTIES

19 Plaintiff organizations

20 42. The plaintiff Coalition to Defend Affirmative Action, Integration, and Immigrant Rights
21 and Fight for Equality by Any Means Necessary (BAMN) is a voluntary unincorporated
22 association organized for the purpose of defending affirmative action and building a new
23 civil rights movement. BAMN's members include black, Latina/o, Native American,
24 Asian American, other minority, and white students in California and across the country,

1 including many who have applied for or attended the various campuses of the University
2 of California.

- 3 43. The plaintiff Defend Affirmative Action Party (DAAP) is a voluntary unincorporated
4 association composed of students at the University of California at Berkeley which has run
5 candidates for student government at that university and engaged in other political activities
6 in defense of affirmative action.

7 High school and middle school student plaintiffs

- 8 44. The plaintiff Tanisha West is a black student who will be graduating from Oakland
9 Technical High School and has an application pending for admission to UC Berkeley.
10 She organized her school's first-ever César Chávez Assembly, and has been a member of
11 the Mayor's Youth Commission and a member of BAMN. She intends to be a creative
12 writing teacher.

- 13 45. The plaintiff Christian Ivan Burgos is a Latino junior at Oakland Technical High School.
14 His parents have a high school level of education. He has a 3.5 GPA and intends to apply to
15 the UC system. If admitted, he would be the first person in his family to attend college.

- 16 46. The plaintiff Mayra Casillas is a Latina senior at Theodore Roosevelt High School, a
17 neighborhood LAUSD public school, and has an application for admission pending with
18 UCLA. She has a GPA of 3.48 and is a member of the marching band.

- 19 47. The plaintiff Adan de la Cruz, by his next friend Luis de la Cruz, is a Latino senior at
20 Theodore Roosevelt High School, a neighborhood LAUSD public school, and has
21 applications for admission pending with UCLA and UCB. He currently has a GPA of 3.87
22 and an SAT score of 1900. He is the president of the Math, Engineering and Science Club
23 (M.E.S.A), a member of the National Honors Society, Drum Major of the Marching Band,
24 a senator for the senior class on the Associated Student Body, and a Peer-to-Peer Mentor.

- 1 48. The plaintiff Omar Serag Eldin, by his next friend Gamil Serag Eldin, is an 8th grade
2 Egyptian American student who attends Martin Luther King, Jr. Middle School in
3 Berkeley. His GPA is 3.0 and he intends to apply to UC Berkeley and UCLA. He trains
4 in martial arts and is a member of BAMN.
- 5 49. The plaintiff Michelle Flores, by her next friend Victoria Barranco, is a Latina senior at
6 Theodore Roosevelt High School, a neighborhood LAUSD public school, and has an
7 application for admission pending with the UCB. She has a GPA of 3.8 and an SAT score
8 of 1270. She is a member of the Academic Decathlon, president of M.A.Y.A., and a
9 member of TELACU.
- 10 50. The plaintiff Jenesis Fonseca, by her next friend Angelica Ledezma, is a Latina senior at
11 Theodore Roosevelt High School, a neighborhood LAUSD public school, and has
12 applications for admission pending with UCLA and UCB. She currently has a GPA of 4.02
13 and an SAT score of 1880. She is the Student Body President of the Associated Student
14 Body - Student Council, a member of the Bible Club and a member of the Boys and Girls
15 Club.
- 16 51. The plaintiff Iliana Gallaga is a Latina senior at Theodore Roosevelt High School, a
17 neighborhood LAUSD public school, and has applications for admission pending with
18 UCLA and UCB. She currently has a GPA of 4.0 and an SAT score of 1910. She is the
19 historian of the Associated Student Body-Student Council.
- 20 52. The plaintiff Jose Garcia is a Latino senior at Theodore Roosevelt High School, a
21 neighborhood LAUSD public school, and has applications for admission pending with
22 UCLA and UCB. He currently has a GPA of 3.1 and an SAT score of 1500. He is the
23 President of the Bible Club and a member of the marching band.
24

- 1 53. The plaintiff Miyuki Gomez, by her next friend Rosa Maria Gomez, is a Latina senior at
2 Theodore Roosevelt High School, a neighborhood LAUSD public school, and has
3 applications for admission pending with UCLA and UCB. She currently has a GPA of
4 3.5 and an SAT score of 1300. She is a co-captain of the volleyball team, a member of
5 Latinas Guiding Latinas from UCLA, a member of the California Scholarship
6 Federation, a member of the Bible Club, and a member of TELACU.
- 7 54. The plaintiff Patricia Gonzalez is a Latina senior at John C. Fremont High School, an
8 LAUSD public school, and has applications for admission pending with UCLA and the
9 UCB. She currently has a GPA of 3.9 and is the elected President of her Senior Class,
10 Captain of the Varsity Cheerleading Team, member of the National Honors Society, a
11 Peace Ambassador for "H.E.A.R.T" at her school, adviser for freshmen students in a
12 program called Link Crew, and a member of the Community Coalition.
- 13 55. The plaintiff Daniel De Jesus Herrera is a Latino senior at Theodore Roosevelt High
14 School, an LAUSD public school, and has applications for admission pending with UCLA
15 and UCB. He currently has a GPA of 4.2 and an SAT score of 1560. He is a member of the
16 Math, Engineering and Science Club (M.E.S.A), a member of the Humanities Leadership
17 Club, a member of the California Scholarship Federation, and a member of the baseball
18 team.
- 19 56. The plaintiff Brenda Iglesias is a Latina senior at Bravo Medical Magnet High School, an
20 LAUSD public school, and has applications for admission pending with the UCLA and the
21 UCB; she currently has a GPA of 4.276 and an SAT score of 1860. She is a member of the
22 National Honors Society, the Science Bowl Team, the varsity swim team, the club swim
23 team, and the water polo team.
24

- 1 57. The plaintiff Jessica Jimenez is a Latina senior at Theodore Roosevelt High School, a
2 neighborhood LAUSD public school, and has an application for admission pending with
3 UCB. She currently has a GPA of 3.8 and an SAT score of 1400. She is the president of the
4 Mentoring Club, was president of the Bible Club in her sophomore year, and has been and
5 continues to be a member of the UCB Pre-Collegiate for the past two years.
- 6 58. The plaintiff Sarah Kim is a Korean American senior at Bravo Medical Magnet High
7 School, an LAUSD public school, and has applications for admission pending with UCLA
8 and UCB; she currently has a GPA of 4.038 and an SAT score of 2000. She is a member of
9 the National Honors Society, the leader of the Jazz Band Music Ensemble, vice president
10 of the Anti-Defamation League, President of the Los Angeles division of the Achiever
11 Club TAC, member of the California Scholarship Federation, member of the swim team,
12 member of the Korean Club, vice president of the Peace Church Youth Group, and a
13 pianist with the Worshiper Praise Team.
- 14 59. The plaintiff Nayeli A. Maravillas, by her next friend Martin Maravillas, is a Latina senior
15 at Bravo Medical Magnet High School, an LAUSD public school, and has an application
16 for admission pending with UCLA. She currently has a GPA of a 3.0 and an SAT score of
17 1590, and is a member of the junior varsity debate team.
- 18 60. The plaintiff Gabriela Martinez, by her next friend Dora Martinez, is a Latina senior at
19 Bravo Medical Magnet High School, an LAUSD public school, and has applications for
20 admission pending with the UCLA and the UCB. She currently has a GPA of 3.2 and an
21 SAT score of 1500; she is a representative of the Anti-Defamation League, co-captain of
22 the swim team, a member of Random Acts of Kindness, the Foster Club, the Gay Straight
23 Alliance, the Film Club, and the Beatles and Music Club. She also led the political and
24 legal fight to maintain the swim team at Bravo Medical Magnet High School.

- 1 61. The plaintiff Gladys Morales, by her next friend Rocio Morales, is a Latina senior high
2 school student at Theodore Roosevelt High School, a neighborhood LAUSD public school,
3 and has applications for admission pending with UCLA and UCB. She currently has a
4 GPA of 4.25 and an SAT score of 1790; she is the treasurer and secretary of M.A.Y.A., a
5 member of the Academic Decathlon, a senator for the senior class and a member of Talent
6 Search Girl Talk (TELACU).
- 7 62. The plaintiff Han Kyul Noh, by his next friend Lucia Noh, is a Korean American senior at
8 Bravo Medical Magnet High School, an LAUSD public school, and has an application for
9 admission pending with the UCLA. He currently has a GPA of a 4.0 and an SAT score of
10 2110. He is a member of the National Honors Society, president of the Key Club, a
11 member of the varsity volleyball team, a member of the Korean Club, a member of the
12 Korean Coalition of Students in California, and a member of the Korea Town Youth and
13 Community Center.
- 14 63. The plaintiff Auria Perez is a Latina junior at Crenshaw High School, a neighborhood
15 Los Angeles public school, and has applications for admission pending with UCLA and
16 UCB.
- 17 64. The plaintiff Maria Elena Polanco, by her next friend Adela Santibana, is a Latina senior at
18 Theodore Roosevelt High School, a neighborhood Los Angeles Public School, and has
19 applications for admission pending with UCLA and UCB; she currently has a GPA of 4.25
20 and an SAT score of 1440. She is a member of the volleyball team, senator for the senior
21 class in the Associated Student Body- Student Council, and president of M.A.Y.A., which
22 is a math, English and science academy within the school.
- 23 65. The plaintiff Merari Ramirez is a Latina senior at Bravo Medical Magnet High School, an
24 LAUSD public school, and has applications for admission pending with UCLA and UCB;

1 she currently has a GPA of a 3.67 and an SAT score of 1630. She is a member and
2 historian of the Anti-Defamation League, on the staff of the Yearbook Committee, member
3 of the Association of Professionals and Students, and a Folklorico dancer.

4 66. The plaintiff Nancy J. Rodriguez, by her next friend Lucia Castillo, is a Latina senior at
5 Theodore Roosevelt High School, a neighborhood LAUSD public school, and has
6 applications for admission pending with UCLA and UCB. She has a GPA of 3.6 and an
7 SAT score of 1500. She is the treasurer for the Associated Student Body – Student
8 Council, a Peer-to-Peer mentor, treasurer for the Student Advisory Council, treasurer for
9 the Bible Club, a member of TELACU and a tutor for A-Star.

10 67. The plaintiff Dominique Short-Thomas is a black student who is graduating from
11 Skyline High School in Oakland, and has applications pending for admission to UC
12 Berkeley and UCLA. Her GPA is currently 3.9 and her SAT score is 1550. She is a
13 member of the Track Team and the Student Council. She also builds and programs
14 robots.

15 68. The plaintiff Alejandro Solis, by his next friend Rosa Desormaux, is a Latino senior at
16 Theodore Roosevelt High School, a neighborhood LAUSD public school, and has
17 applications for admission pending with UCLA and UCB. He currently has a GPA of
18 3.47 and an SAT score of 1550. He is a member of the Academic Decathlon and a
19 member of the Keystone Leadership Group.

20 69. The plaintiff Jasmine Tovar, by her next friend Luz Tovar, is a Latina senior at King/Drew
21 Medical Magnet High School, a Los Angeles Unified School District (LAUSD) public
22 school, and has an application for admission pending with UCLA. She has a GPA of 3.9
23 and an SAT score of 1440; she is currently a member of Junior Statesmen of America, the
24

1 California Scholarship Federation and Ocean Challenge, as well as an intern for You
2 Think.

3 70. The plaintiff Brenda Trujillo is a Latina junior at Oakland Technical High School's Health
4 Academy who wants to apply to UC and become a veterinarian. If she enters UC, she
5 would be the first person in her family to go to college. She is currently volunteering at a
6 veterinary hospital.

7 71. The plaintiff Jose Roberto Valenzuela is a Latino third year undergraduate student at the
8 University of California Los Angeles (UCLA) and upon graduation will be applying to the
9 law schools of UCLA and the University of California Berkeley. He currently has a grade
10 point average (GPA) of 3.29. He is a member of BAMN, treasurer of Hermanos Unidos,
11 and a member of the Latin American Student Association.

12 72. The plaintiff Ruby Villarruel, by her next friend Olivia Villarruel, is a Latina senior at
13 Theodore Roosevelt High School, an LAUSD public school, and has applications for
14 admission pending with UCLA and UCB. She currently has a GPA of 4.19 and an SAT
15 score of 1780. She is the historian of the Design Team One, and editor of the Newspaper
16 Club.

17 73. Jerrica Webb is a black senior at Skyline High School in Oakland, California. She is an
18 intern at the Ella Baker Center for Human Rights.

19 74. Amber Williams, by her next friend Carlette King-Williams, is an 8th grade black
20 student who attends Martin Luther King, Jr. Middle School in Berkeley. Her current
21 GPA is 3.0 and she intends to apply to UC Berkeley and UCLA. She is active in the
22 Black Student Union and also trains in dance.

23 75. The plaintiff Ricardo Zazueta is a Latino senior at Theodore Roosevelt High School, a
24 neighborhood LAUSD public school, and has an application for admission pending with

1 UCLA. He currently has a GPA of 3.4 and an SAT score of 1450. He is the Drum
2 Captain of the Roosevelt High School Marching Band.

3 University of California and other college student plaintiffs

4 76. The plaintiff Issamar Camacho is a Latina graduate of Roosevelt High School in Los
5 Angeles, who is on leave from the University of California at Berkeley and plans to apply
6 to its graduate schools upon her graduation from its undergraduate college. She is a
7 member of BAMN and has run for ASUC student government vice president of external
8 affairs as a candidate with the Defend Affirmative Action Party (DAAP).

9 77. Maria Belman is a third year Latina second-year student at UC Berkeley who intends to
10 apply to UC Berkeley and UCLA Law Schools. Her GPA 3.0. She is a member of
11 BAMN.

12 78. The plaintiff Calvin Jevon Cochran is a black student who is finishing his courses at
13 Laney and Berkeley Community Colleges. His GPA is currently a 3.8 and he has an
14 application pending for admission to UC Berkeley. He is active with various student
15 justice organizations.

16 79. The plaintiff Jeremy Bamidele is a black student at the University of California at
17 Berkeley.

18 80. The plaintiff Jonathan Brooks is a black student majoring in Theater and Performance
19 Studies at UC Berkeley.

20 81. The plaintiff Bianca Centeno is a Latina first year undergraduate student at the UCLA and
21 upon graduation will be applying to the law schools of UCLA and UCB; she currently has
22 a GPA of 3.0 and is an active member of Hermanas Unidas.

23 82. The plaintiff Veronica Donerson is a black third-year undergraduate student at the UCLA,
24 and will be applying to the medical school at UCLA upon graduation. She currently has a

- 1 GPA of 3.0 and is a volunteer for Riordan Health Care Management, a member of For Real
 2 History and Hope of Our People (4REAL), and NOMMO Black News Magazine.
- 3 83. The plaintiff Jose Flores is a Latino freshman at UC Berkeley.
- 4 84. The plaintiff Gabriela Galicia is a Latina student and alumna of UC Berkeley. She intends
 5 to become a lawyer and apply to Berkeley Law School.
- 6 85. The plaintiff Jose Garcia is a Latino student at City College of San Francisco.
- 7 86. The plaintiff Anthony Keoki Gracia is a Latino and Hawaiian student at UC Berkeley.
- 8 87. The plaintiff Rabiah Harrison is a black student studying engineering at City College of
 9 San Francisco.
- 10 88. The plaintiff Rose Anita Hernandez is a Latina third-year student at UCLA and upon
 11 graduation will be applying to the law schools of the University of California Berkeley and
 12 the University of California San Diego. She currently has a 3.4 GPA and is active in
 13 various minority tutoring programs at UCLA.
- 14 89. Zaira Hernandez is a third-year Latina student at the University of California at
 15 Berkeley. Her GPA is 3.8, and she intends to apply to UC Berkeley and UCLA for Law
 16 School. She regularly stages her artwork and also studies herbalism.
- 17 90. The plaintiff Dominique Lofgren is a Filipina and Swedish undergraduate student studying
 18 sociology, anthropology, and black feminism at UC Berkeley.
- 19 91. The plaintiff Antonio Love is a black student at UC Berkeley.
- 20 92. The plaintiff Javier Meza is a Latino student at UC Berkeley.
- 21 93. The plaintiff Jalima Morales is a Latina student at City College of San Francisco.
- 22 94. The plaintiff Aislyn T. Namanga is a black second-year undergraduate student at UCLA
 23 and upon graduation will be applying to the law schools of UCLA and the University of
 24 California Berkeley (UCB). She has a 3.1 GPA and is a member of BAMN.

1 95. The plaintiff Nicholas Ogbuehi is a black student studying molecular and cell biology at
2 UC Berkeley.

3 96. The plaintiff Japhinma Power is a black sophomore studying engineering at UC Berkeley.
4 He has run for the student government senator as a candidate with the Defend Affirmative
5 Action Party (DAAP).

6 97. The plaintiff Aaron Sampson is a black student at UC Berkeley.

7 98. The plaintiff Andrew Sanchez is a Latino student at UC Berkeley.

8 99. The plaintiff Desiree Tienturier is a Middle Eastern student at UC Berkeley.

9 Defendants

10 100. The defendant Arnold Schwarzenegger is the Governor of the State of California and is
11 joined in his official capacity.

12 101. The defendant Regents of the University of California ("the Regents") is the duly
13 appointed corporation that administers the public trust of the University of California
14 pursuant to the terms of Article 9, Section 9 of Constitution of the State of California.

15 102. The defendant Mark Yudof is the President of the University of California and is joined in
16 his official capacity.

17
18 **CLASS ACTION**

19 103. Pursuant to Rule 23(b)(2), the plaintiffs may maintain this action as a class action because
20 the defendants are acting on the basis of Proposition 209, which is common to all members
21 of the class.

22 104. The plaintiffs represent the following classes or subclasses:

- 23 a. The class of all black, Latina/o and Native American applicants to and students at any
24 school or campus of the University of California;

b. The class of all black, Latina/o, and Native American and other residents who want to lobby for changes in the admission and other policies of the defendant universities in order to secure the admission of more black, Latina/o and Native American applicants to the University of California.

105. The classes set forth above are so numerous that joinder is impracticable.

106. The question of the validity of Proposition 209 is common to the claims of the class.

107. The claims of the named black, Latina/o, and Native American students and applicants are typical of the claims of the class of such students.

108. The claims of the named organizations and the individual citizens are typical of the class of citizens seeking change in admission and other policies that are beneficial to minorities.

109. The representative plaintiffs will fairly and adequately represent the interests of the classes they seek to represent.

STATEMENT OF FACTS

A. The mission of the University of California and the normal procedures by which its schools adopt their admission policies.

110. In 1868, the state of California chartered the University of California as a land grant university.

111. In its Constitution, the state declared that the University was a public trust and granted the Regents,

...full powers of organization and government, subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university and such competitive bidding procedures as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services.

1 Cal Const, art 9, sec 9.

2 112. From the beginning, the Regents asserted full control over the admission policies of the
3 University.

4 113. In 1960, the state's new Master Plan for higher education established that the UC was to
5 admit the top 12.5 percent of the state's high school students.

6 114. Under the Master Plan, the Regents asserted and retained full power to determine the
7 criteria for which students were "UC eligible" and to determine the categories of
8 exceptions to those criteria.

9 B. The University's commitment to equality and affirmative action.

10 115. Echoing Lincoln and thus of Emancipation and Reconstruction, Daniel Coit Gilman, one
11 of the first Presidents of the University of California, proclaimed in 1872 that it should
12 become a university "of the people and for the people not in any low or unworthy sense,
13 but in the highest and noblest relation to their intellectual and moral well-being."

14 116. Following that goal, the UC has from its founding provided an opportunity for students
15 from lower social and economic backgrounds by varying its eligibility and admission
16 criteria and by awarding plus factors to those from such backgrounds.

17 117. But even though the University maintained a policy of non-discrimination by race
18 throughout its history, there were few black, Latina/o., Native American or Asian until
19 the 1960s.

20 118. Before 1970, any student who was "UC eligible" could attend the undergraduate college
21 of his or her choice.

22 119. Beginning in the early 1970s, however, the number of applicants applying to the most
23 prestigious campuses, including especially those at Berkeley and UCLA, exceeded the
24 number of spaces available at those campuses.

1 120. The Regents formed general standards for admission to the oversubscribed campuses
2 and delegated to the local administrations and faculty the task of formulating more
3 specific standards for admission to each campus of the UC.

4 121. The Regents or the local administrations therefore established grade point averages,
5 extra credit for advanced placement courses, scores on standardized tests, and similar
6 factors as admission criteria for the oversubscribed campuses.

7 122. In keeping with its stated commitment to social and economic equality, the Regents
8 directed, authorized or allowed the individual campuses to consider the applicants'
9 economic, social and geographic backgrounds and similar factors in order to assure that
10 students from a variety of different backgrounds were admitted to the UC and to each of
11 its campuses.

12 123. Even though the UC has and still has a far higher than average balance in the economic
13 backgrounds of students attending the various UC, those factors standing alone have not
14 admitted black, Latina/o and Native American students because racial inequality has
15 been both deeper and distinct from economic inequality.

16 124. Under pressure from the Civil Rights Movement and student and urban protests, the UC
17 began in the 1960s to vary its eligibility criteria in order to ensure that more black,
18 Latina/o, and Native American students were eligible for admission to the UC.

19 125. Similarly, after 1970, the Regents and the individual campus administrations adopted the
20 first affirmative action programs in order to assure that larger numbers of Latina/o, black
21 and Native American students were actually admitted to the most selective campuses.

22 126. The new affirmative action policies adopted the explicit consideration and the plus
23 factors that had been used to temper the other educational inequalities that the UC's
24 traditional criteria captured.

1 127. But because racial inequality was both different and far larger than inequality caused by
2 any other factor, explicit consideration was even more necessary and the plus factors had
3 to be larger in order to counteract inequality that far exceeded that caused by all other
4 factors.

5 128. The new affirmative action programs resulted in a rapid and significant increase in the
6 number of black, Latina/o and Native American students at all of the UC campuses—
7 and ultimately to new minority attorneys, doctors, business and political officials, and
8 leaders in almost every field.

9 129. From time to time, the Regents or its subordinate bodies or officials changed the
10 affirmative action plans due to educational experience, increasing knowledge about its
11 other admission criteria, changing legal requirements, the growing minority population
12 of the state, or other similar factors.

13 130. Until the passage of Proposition 209 in 1996, however, the Regents had full power over
14 all aspects of the admission policy—including full power to change any aspect of those
15 policies by majority vote of the Regents.

16 C. Proposition 209's dishonest and dangerous attack on affirmative action.

17 131. In 1995, Ward Connerly, a Regent whom Governor Pete Wilson had just appointed,
18 began a campaign against affirmative action.

19 132. Connerly and Wilson used the difference in GPAs and test scores between white
20 students and Latina/o, black and Native American students as the excuse to appeal to
21 prejudice by labeling affirmative action as “racial preferences.”

22 133. Connerly and Wilson's attack was fundamentally dishonest because both of them knew
23 that the admission criteria both captured and magnified the inequality caused by the de
24 facto segregation and inequality in elementary and secondary education.

1 134. But the attack was politically effective because it appealed to many white residents who
2 felt they were being left behind in a state that was rapidly changing.

3 135. To their credit, all nine chancellors of the UC campuses opposed Connerly's efforts.
4 Both they and the admissions officers specifically warned the Regents that banning
5 affirmative action would result in sudden and severe drops in Latina/o, black, and Native
6 American student enrollment.

7 136. Connerly and Wilson pressed ahead, however, and, in July 1995, they secured the
8 Regents' approval of SP-1 which banned any constituent part of the University from
9 considering race in admitting students for any purpose, including attempts to ensure that
10 the entering classes were racially diverse and integrated.

11 137. As Connerly wrote in his autobiography, he feared that the Regents would reverse their
12 vote if the normal democratic processes remained in place.²

13 138. Connerly therefore agreed to lead the drive to pass Proposition 209.

14 139. Like the Southern segregationists who put the grandfather clauses, literacy tests, and
15 other similar laws into the Constitution where they could not be changed, Connerly and
16 Wilson decided to put the ban on affirmative action in California's Constitution where it
17 would be difficult, if not impossible, to change.

18 140. In November 1996, the white majority of California's electorate provided the votes to
19 pass Proposition 209 by a margin of 54 to 46 percent.

20 141. The immediate effects were devastating. In the first year in which it was effective,
21 Latina/o, black, and Native American student admissions at UC-Berkeley fell by 52.1
22
23

24 _____
² Connerly, Ward. *Creating Equality*, p. 165-166.

1 percent, admissions at UCLA fell by similarly large numbers, and the effect in some of
2 the UC's law, medical and other schools was even worse.³

3 142. In the years since, minority students have been driven from the campuses at Berkeley
4 and UCLA onto the campuses of the less selective UC campuses.

5 143. Thus, in the freshman class that was admitted for Fall 2009, Latina/o, black, and Native
6 American students comprised of 17.7 and 19.4 percent of the new admits at UC-
7 Berkeley and UCLA respectively, but 33.5 percent and 34.4 percent of the new admits at
8 UC-Riverside and UC-Merced respectively.⁴ Proposition 209 resulted in a dramatic
9 redistribution of Latina/o, black, and Native American students out of UC-Berkeley and
10 UCLA and into less selective C campuses. (Ex 5-6)

11 144. Even with these increases in minority admissions at the newer and less selective
12 campuses, the percentage of Latina/o, black and Native American students in UC as a
13 whole has not kept pace with the rising percentage of those groups among high school
14 graduates of the state (Ex 1-3).

15 145. The number of underrepresented minority students at the UC's flagship campuses of
16 UC-Berkeley and UCLA has lagged far behind the rapid growth of California's minority
17 student population, including in particular its Latina/o population.⁵ (Ex 7)

18 146. The UC's most selective graduate schools are faring even worse. In 2005, the most
19 recent publicly available data, the Latina/o, black, and Native American students
20
21
22

23 ³ Data from UC Office of the President. <http://www.ucop.edu/news/studstaff.html>

24 ⁴ Ibid.

⁵ Annual UC Office of the President diversity report to the UC Regents.
<http://www.universityofcalifornia.edu/regents/regmeet/nov09/j2f.pdf>

comprised only 12 percent of new law students, 17 percent of new medical students, and 4.5 percent of new business students.⁶ (Ex 8)

147. Indeed, in 2008, underrepresented minority students comprised only 5 percent of all graduate students in engineering and computer sciences.

148. The UC's various schools have attempted to mitigate the sharp drop in minority admissions by adopting a "comprehensive review" of applications, by varying the standardized tests, by admitting the top four percent of graduates from any high school, by decreasing the weight of the tests, and by other policies.

149. None of these measures, however, have had more than a minor effect.

150. Moreover, the effects of budget cutbacks are now overwhelming some of these measures.

151. Today, the UC and its most selective campuses in particular accept a far lower percentage of the Latina/o, black and Native American students who apply than those from any other racial group.⁷ (Ex 9)

152. The Regents themselves have recognized that all of their efforts to prevent the decline in Latina/o, black and Native American enrollment cannot be successful as long as Proposition 209 remains in effect. Thus, in 2001, the Regents repealed SP-1 and have issued report after report documenting the disastrous fall in minority enrollment.

153. But as the Regents have recognized, as long as Proposition 209 prohibits affirmative action, they cannot fundamentally alter the increasing distance between the racial

⁶ "Report of the Work Team on Graduate and Professional School Diversity," p. 14 (Sept. 2007). <http://www.universityofcalifornia.edu/regents/regmeet/nov09/j2f.pdf>

⁷ At UC-Berkeley in the Fall 2009 entering class, 17.8% of black freshman applicants and 21.8% of Latina/o freshman applicants received admission offers, compared to 31.1% of white applicants and 31.9% of Asian American applicants. At UCLA, black and Latina/o freshman applicants were similarly admitted at two-thirds the rate white and Asian American applicants were admitted. (Data obtained from University of California Office of the President: <http://www.ucop.edu/news/studstaff.html>)

1 composition of student bodies at the UC and the racial composition of the state as a
2 whole and of its high school graduates in particular.

3 D. The standards for determining UC eligibility and admission to the various schools of the
4 UC are not, and never have been, racially neutral.

5 154. From the beginning, the opponents of affirmative action claimed that it discriminated
6 against white people and men by departing from an allegedly neutral system and giving
7 “preferences” to minority students.

8 155. There is not now, and never has been, any truth to this claim.

9 156. Indeed, it is generally recognized that granting plus factors for lower socio-economic
10 status, rural backgrounds, and similar factors is not “discrimination” or “preferences,”
11 but rather recognition of that form of inequality and a legitimate means to achieve a
12 diverse and integrated class.

13 157. But racism is so strong that when the same policy is applied to race, it suddenly is called
14 a “preference.”

15 158. The simple fact is, however, that California has for many decades maintained a system
16 of elementary and secondary education that is separate and unequal.

17 159. Due to pervasive residential segregation, almost all black students and the overwhelming
18 majority of Latina/o students attend urban schools that are almost totally segregated.

19 Similarly, most Native American students attend segregated schools on the reservations
20 or segregated schools in the urban centers where they now live.

21 160. As is undisputed by serious observers, segregated schools and, even more so, intensely
22 segregated schools, have fewer facilities, fewer certified teachers, fewer resources, fewer
23 AP and honors programs, smaller or non-existent libraries, fewer counselors, less
24 knowledge about university admission systems, more overcrowding, and a host of other
disadvantages.

1 161. Moreover, segregated schools almost always have concentrated poverty, unlike that
2 found in almost all schools that are majority white. That concentration means that poor
3 minority students, unlike poor white students, almost never have the educational
4 advantages that come from attending schools with those who are more economically and
5 educationally privileged.

6 162. Beyond these objective factors, segregated schools suffer from the overriding stigma of
7 inferiority, which leads white students and the minority students themselves to devalue
8 their schools and their achievements in ways that profoundly affect the minority
9 students' futures.

10 163. A few black and somewhat more Latina/o and Native American students are able to
11 escape the world of segregated schools.

12 164. This almost always assures important educational advantages to those students when
13 compared to the educational opportunities available in a segregated school.

14 165. But even in those schools, tracking, racial isolation, racial hostility, the pervasive stigma
15 of inferiority, and a host of other factors mean that they do not receive an education
16 equal to that of their white peers.

17 166. Nor do they receive an education that is equal to students from many Asian
18 backgrounds, who suffer discrimination themselves, but are more integrated into society
19 and who come from economic and social backgrounds that now approximate those of
20 much of the white population.

21 167. The educational segregation and inequality described above necessarily mean that
22 Latina/o, black, and Native American students cannot display as many educational
23 accomplishments on their applications.
24

1 168. That is *not* because minority students are less smart or less diligent, as is so often stated,
2 but solely and simply because minority students have been subjected to enormous
3 educational disadvantages through absolutely no fault of their own.

4 169. The educational segregation and inequality described above has even greater
5 consequences on the scores on standardized tests that play a crucial role in the UC's
6 admission standards.

7 170. As shown by numerous studies, differing average test results result from different home
8 income and wealth, different parental education levels, different language backgrounds,
9 and a host of similar factors.

10 171. But above and beyond the differences caused by all of these factors, race is the single
11 greatest cause of differing average test scores.

12 172. The causes of those differences is complex and multi-faceted, including the direct effects
13 of segregated and unequal education on the students, bias of various kinds in the tests,
14 serious anxiety among racial minorities taking tests that they fear will be used to brand
15 them inferior and a host of similar factors.

16 173. Even the testing companies have been forced to admit that these tests do not measure
17 intelligence, aptitude or any similar factor—or still less, ambition, courage, or any
18 similar factor.

19 174. As revealed in the fine print of the test manufacturer's claims, the test scores measure, at
20 best, a loose and sometimes non-existent correlation with first-year grades.

21 175. By all accounts, the standardized tests have an enormously disparate effect on Latina/o,
22 black and Native American students. In 2007, for example, the College Board revealed
23 that white students had an average combined score on the SAT verbal and math tests
24

1 that was that was, respectively, 125, 208, and 292 points higher than the average for
 2 Native American, Chicano and African-American students.

3 176. This racial gap transcends all income categories. Indeed, as Connerly himself conceded
 4 in a deposition, the UC's own statistics show that black students from the highest
 5 income brackets score lower on average than white students from the lowest income
 6 brackets.⁸

7 177. Moreover, at the graduate level, there is evidence that the standardized tests exaggerate
 8 the differences between students. Thus, for example, a study of students applying to
 9 Boalt Hall showed that black and Latina/o applicants who achieved the same grades in
 10 the same majors at the same undergraduate colleges scored dramatically lower on
 11 average on the LSAT than white applicants whose educational qualifications were
 12 essentially identical.⁹

13 178. Finally, the factors listed are compounded in applications for graduate school by the
 14 comparatively small number of minority undergraduate students. This leads to increased
 15 isolation—and increased acts of racial insensitivity and hostility from some white
 16 students, which compound the challenges that minority students already face at those
 17 universities.

18 179. By any standard *except* that *assumed* by the *Wilson* panel, the University's admission
 19 criteria are not, and never have been, racially neutral.

20 180. By any standard except that assumed by the *Wilson* panel, the fight for relief from the
 21 University's admission criteria is a fight against discrimination.

22 _____
 23 ⁸ *Journal of Blacks in Higher Education*, Summer 1998, p. 6. Accepted by former UC Regent
 24 Ward Connerly, affirmative action opponent. (Dep of Connerly, p. 101-102.)

⁹ "Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?:
 A Study of Equally Achieving 'Elite' College Students," *California Law Review*, Vol. 89, No. 4.
 (2001), pp. 1055-1124.

1 181. As educational officials have long recognized, in order to recognize talent among
2 Latina/o, black and Native American applicants, it is necessary to consider their
3 educational credentials in light of all of the social characteristics of the applicant,
4 including, above all, in light of the applicant's race.

5 182. Proposition 209 has, however, outlawed that consideration.

6 183. Under the force of law, the university admissions officials are forced to ignore the
7 educational effects of the pervasive de facto segregation, biases in test results, and a
8 myriad of other factors that the officials *know* must be considered in order to assess a
9 minority student's promise—but which they must singularly ignore even as they
10 consider every lesser form of social inequality.

11
12 E. The Booker T. Washington response.

13 184. In the Michigan litigation challenging a carbon-copy of Proposition 209—which is now
14 pending in the Sixth Circuit—Ward Connerly conceded virtually every fact set forth in
15 this Complaint.

16 185. He, however, maintained his support for Proposition 209 because, he said, it would
17 administer the “tough love” necessary to induce minority students to work harder.

18 186. Mr. Connerly's claim that minority students need to be shocked into working harder is
19 nothing other than a slightly restrained version of the racist claim that minority students
20 have not succeeded because they are “lazy.”

21 187. In fact, minority students already have to and do work far harder just to get to the same
22 place as students from a more privileged background.

1 188. Mr. Connerly and some of his supporters also assert that if minority students only secure
2 admission to schools that offer less opportunities, they will be happier there because
3 they are a "better match" for those students.

4 189. But this assertion ignores the fact that Proposition 209 forces the UC and each of its
5 campuses to turn down numerous Latina/o, black, and Native American applicants who
6 are fully qualified to attend those schools and who want to attend those schools because
7 they rightly believe that they are entitled to every educational opportunity that is
8 afforded to those who are far more privileged than they are.

9 190. All of these arguments are simply reprises, in new conditions, of Booker T.
10 Washington's admonitions that black people should adjust to segregation by "casting
11 down their bucket where they were," by avoiding any open challenge to the system of
12 segregation, and by hoping that, in time, the "best" elements of the white population will
13 recognized what a loyal workforce they can be.

14 191. Washington's counsel paved the way for segregation, for inequality and for all of the
15 horrors that were used to support that system.

16 192. At the dawn of the 21st century, the Latina/o and black plaintiffs will not repeat that
17 error by accepting Connerly's advice to work harder and to avoid any confrontation with
18 the system of de facto segregation.

19 193. The plaintiffs will instead fight to strike down Proposition 209 because that law
20 enshrines and perpetuates the pervasive de facto segregation and inequality in the state
21 and because that law can only lead to a disaster for them and for the state as a whole.
22
23
24

COUNT ONE

RACIAL DISCRIMINATION IN THE STRUCTURE OF GOVERNMENT

194. The allegations of the preceding paragraphs are repeated as if fully set forth herein.

195. For 150 years, every individual and group has been able to petition the Regents, and the governing officials and faculties at each of the UC schools for the adoption of new policies, changes in the policies, or exceptions in the existing policies in order to facilitate a particular group's ability to secure admission to the UC or to one of its schools.

196. Proposition 209, however, has stripped the Regents of the power to consider or adopt otherwise lawful proposals advanced for one purpose and one purpose alone: facilitating the admission of black, Latina/o and Native American students.

197. By stripping the Regents and the faculties of that power, Proposition 209 has deprived minority residents and their supporters of access to the normal procedures that all other groups may continue to use to win or preserve policies that facilitate the admission of their members.

198. In order to secure changes that are in their interest, Latina/o, black and Native American residents—and they alone—must expend the considerable resources needed for the almost certainly impossible task of persuading an electorate that is still majority white to repeal or amend Proposition 209.

199. By decreeing that it will be more difficult for minorities to seek aid from the government than it is for any other group, Proposition 209 has violated the Equal Protection Clause in the most literal and fundamental sense.

1 200. In its 1997 decision, however, the *Wilson* panel declared that there was no violation of
2 the Equal Protection Clause because it asserted that minorities were supposedly seeking
3 a “preference” from an otherwise neutral system.

4 201. From the beginning, that decision was based on a false factual premise—in reality an
5 ideological *assumption*, devoid of *any* evidence to support it—because the existing
6 admission standards were not racially neutral and demands for relief from them were
7 obviously efforts to fight discrimination. “

8 202. As became clear with the *Grutter* decision in 2003, the *Wilson* panel decision was also
9 based on false, indeed non-existent, legal foundations, because, as the Court held, in
10 selective universities, affirmative action plans were the only practical means of
11 furthering the compelling interest of assuring that students from all racial backgrounds
12 could actually attend the universities that trained most of tomorrow’s leaders.

13 203. In 2007, the Supreme Court majority knocked the final prop out from under the *Wilson*
14 panel decision by holding that its central legal premise—the theory of the color-blind
15 constitution—was inconsistent with the Fourteenth Amendment and could not be used
16 as the *Wilson* panel did as a guide to policy in all circumstances.

17 204. Today, Proposition 209 therefore stands in naked violation of the Fourteenth
18 Amendment’s ban on relegating minorities to more onerous procedures than other
19 citizens must use when they seek lawful changes in admission policies.

20
21 Wherefore, the plaintiffs ask this Court to grant preliminary and permanent injunctive
22 and declaratory relief restraining the defendants from enforcing Proposition 209 insofar as it
23 applies to the admission, education and graduation of students at the University of California.
24

1 The plaintiffs also request such further relief as is just and equitable, including the attorneys'
 2 fees and costs of this action.

3
 4 **COUNT TWO**

5 **RACIAL DISCRIMINATION**
 6 **IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE**
 7 **FOURTEENTH AMENDMENT**

8 205. The allegations of the preceding paragraphs are repeated as if fully set forth herein.

9 206. Proposition 209 intentionally discriminates against Latina/o, black and Native American
 10 applicants in three separate, but interrelated ways.

11 207. First, Proposition 209 prohibits the University from pursuing racial diversity and
 12 integration even though the University may continue to pursue every other form of
 13 diversity and integration.

14 208. Second, Proposition 209 has prohibited the University from considering racial inequality
 15 in education in the same way that it considers other, lesser forms of inequality in
 16 education.

17 209. Third, Proposition 209 explicitly aimed at driving down and holding down the numbers
 18 of racially-defined groups of students and applicants by forcing the University to apply
 19 its normal admission criteria in ways that capture and magnify the racial segregation and
 20 inequality in elementary and secondary education.

21 210. The racial target of 209 is explicit: the only supposedly underqualified applicants it
 22 targets are those who are Latina/o, black, or Native American.

23 211. Indeed, Connerly, the primary sponsor of Proposition 209, has explicitly and under oath
 24 endorsed a racial goal by declaring that black, Latina/o, and Native American students

1 for some unstated reason will, unlike other students, only respond if they receive a dose
2 of what he calls “tough love.”

3 212. In his historic dissent in *Plessy*, Justice Harlan rightly and strongly rebuked his
4 colleagues because they lacked the simple candor to state that the law requiring separate
5 accommodations on New Orleans’ streetcars was obviously intended to exclude, demean
6 and degrade black citizens.

7 213. Simple candor today requires recognizing that Proposition 209 had no goal other than
8 making it nearly impossible for the University to overcome the continuing massive de
9 facto segregation in elementary and secondary education and thus to require it to
10 exclude those students from its colleges essentially forever.

11 214. Proposition 209 has achieved its known and intended effect: those students are no longer
12 in those universities in numbers that even remotely reflect their growing share of the
13 young population of the state.

14 215. The Fourteenth Amendment was proposed and ratified to prevent the states from
15 imposing separate legal requirements on persons because of their race—and, if candor is
16 to be preserved, a law that requires public officials to approach the admission of racial
17 categories of students in particular ways, that administers “tough love” to categories
18 defined by race, and that results in the exclusion of students because of their race is
19 nothing other than a violation of the letter and purpose of an Amendment that is
20 fundamental to American democracy in a period where the Nation is becoming, for the
21 first time, a Nation that is no longer majority white.

22
23 Wherefore, the plaintiffs ask this Court to grant preliminary and permanent injunctive
24 and declaratory relief restraining the defendants from enforcing Proposition 209 insofar as it

1 applies to admissions at the University of California. The plaintiffs further request that this
2 Court award such further relief as is just and equitable, including the attorneys' fees and costs
3 of this action.
4

5 By Plaintiffs' Attorneys,
6 SCHEFF, WASHINGTON & DRIVER, P.C.

7 BY: /s/Ronald Cruz
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Dated: February 15, 2010

*Applications for admission pro haec vice pending

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

BY: /s/Ronald Cruz
Ronald Cruz (State Bar No. 267038)
February 15, 2010

FIGURE 29: The Gap Between California High School Graduates and New UC Freshmen for Underrepresented Minorities, Fall 1989 to 2009

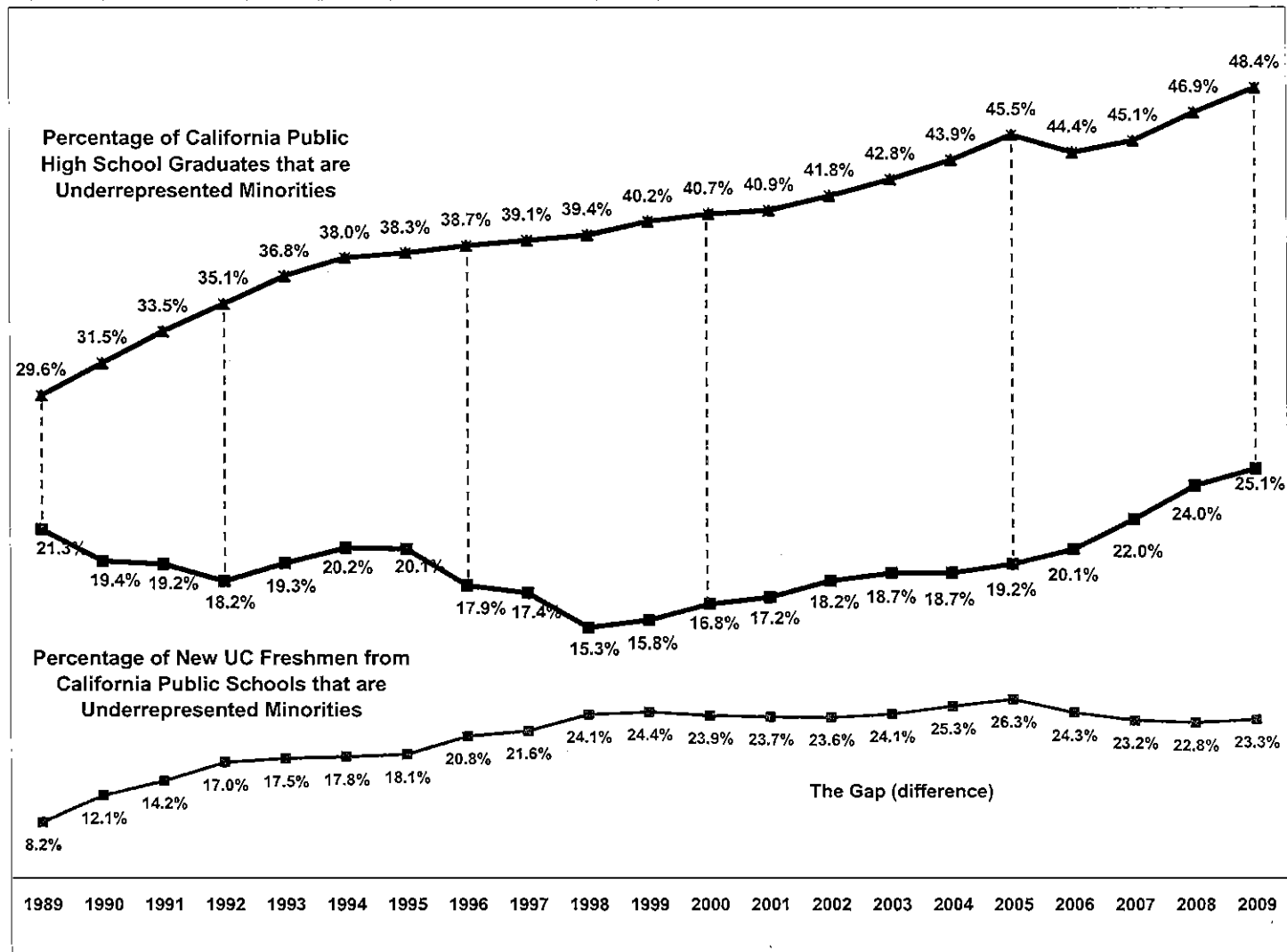


EXHIBIT 1

May Accountability Report Indicator 3.2

EXHIBIT 2

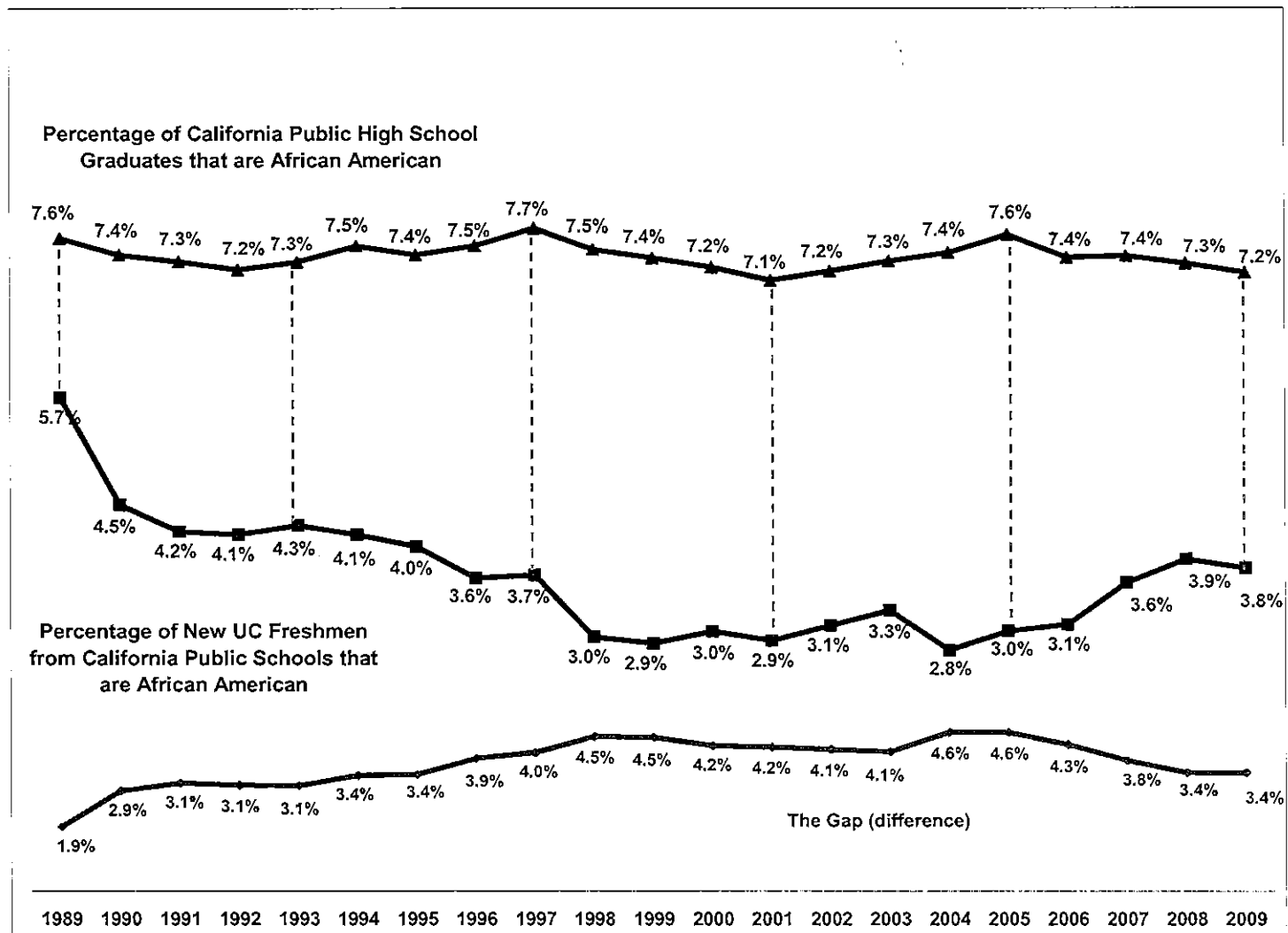


EXHIBIT 3

FIGURE 31: The Gap Between California High School Graduates and New UC Freshmen Chicano/Latino Students, Fall 1989 to 2009

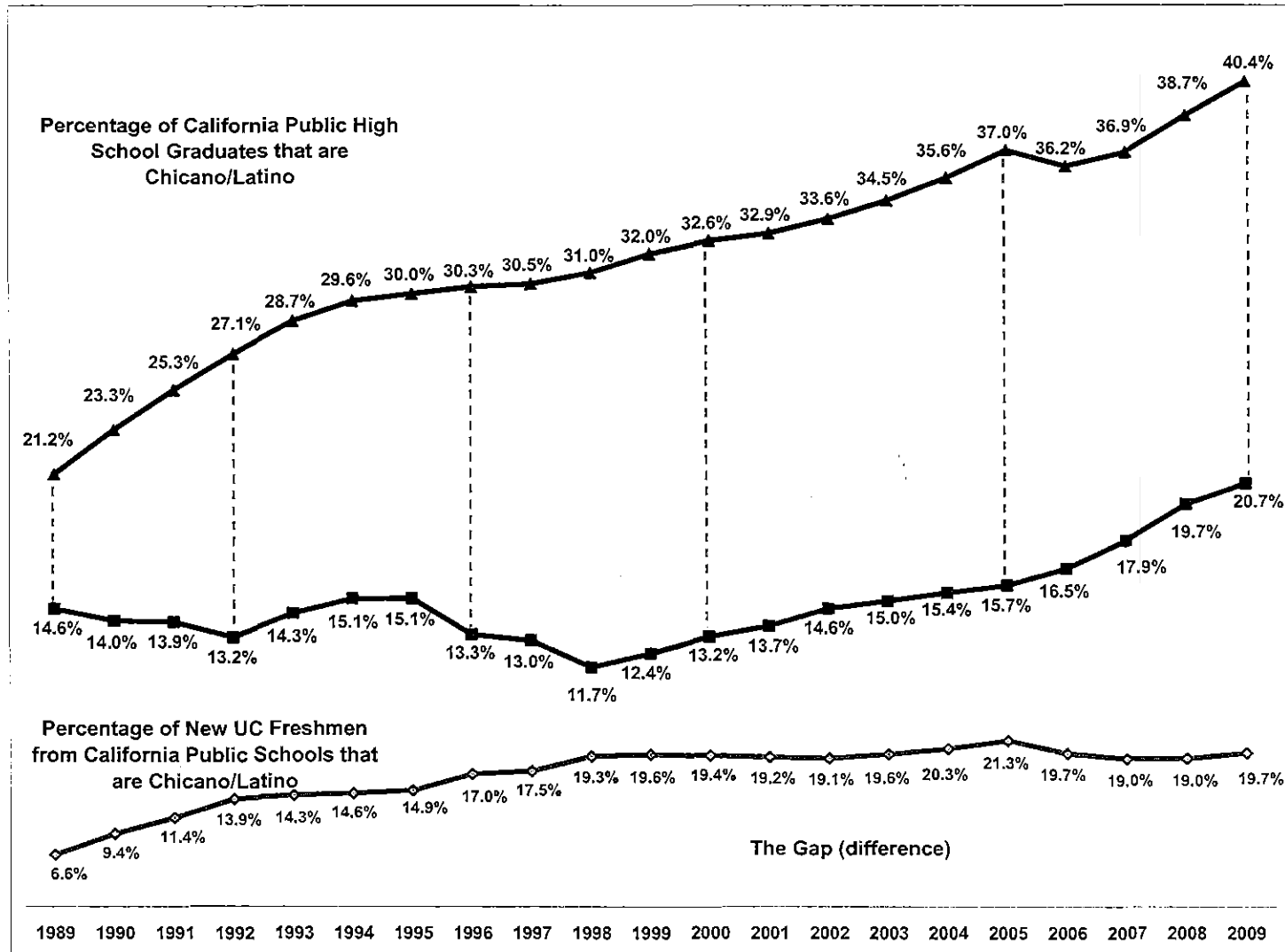


EXHIBIT 4A

FIGURE 18: MINORITY STUDENT ACCESS

Green	Top Quartile	Red	Bottom Quartile
Yellow	Middle Quartiles	Grey	Omitted From Quartiles

Performance Metric 1: Minority Student Access			
	1	2	3
	Spring '07 HS Grads, % URM	Fall '07 Freshmen, % URM	Minority Student Access Ratio '07
U. of Alaska Fairbanks (AK)	29.0%	27.0%	0.93
U. of Alabama (AL)	34.6%	10.7%	0.31
U. of Arkansas Main Campus (AR)	25.5%	10.5%	0.41
U. of Arizona (AZ)	42.3%	24.0%	0.57
U. of California-Berkeley (CA)	45.1%	16.9%	0.37
U. of Colorado at Boulder (CO)	24.0%	9.4%	0.39
U. of Connecticut (CT)	23.8%	14.2%	0.60
U. of Delaware (DE)	34.5%	13.9%	0.40
U. of Florida (FL)	41.0%	29.9%	0.73
U. of Georgia (GA)	38.9%	9.4%	0.24
U. of Hawaii at Manoa (HI)**	6.2%	5.1%	0.82
U. of Iowa (IA)	7.3%	6.2%	0.85
U. of Idaho (ID)	10.9%	9.4%	0.86
U. of Illinois at Urbana-Champaign (IL)	29.2%	16.3%	0.56
Indiana U.-Bloomington (IN)	12.8%	7.9%	0.62
U. of Kansas (KS)	16.5%	8.3%	0.50
U. of Kentucky (KY)	11.5%	8.4%	0.73
Louisiana State U. and Agricultural & Mechanical College (LA)*	40.4%	13.2%	0.33
U. of Massachusetts Amherst (MA)	17.2%	10.4%	0.60
U. of Maryland-College Park (MD)	40.1%	21.6%	0.54
U. of Maine (ME)	3.1%	4.3%	1.39
U. of Michigan-Ann Arbor (MI)	19.9%	12.5%	0.63
U. of Minnesota-Twin Cities (MN)	9.9%	9.0%	0.91
U. of Missouri-Columbia (MO)	17.5%	9.6%	0.55
U. of Mississippi Main Campus (MS)	48.4%	13.8%	0.29
U. of Montana (MT)	10.3%	6.7%	0.65
U. of North Carolina at Chapel Hill (NC)	33.1%	18.6%	0.56
U. of North Dakota (ND)	7.8%	4.0%	0.51
U. of Nebraska-Lincoln (NE)	13.7%	7.9%	0.58
U. of New Hampshire-Main Campus (NH)	3.3%	4.6%	1.39
Rutgers U.-New Brunswick (NJ)	30.3%	19.1%	0.63
U. of New Mexico-Main Campus (NM)	59.6%	48.8%	0.82
U. of Nevada-Reno (NV)	30.6%	15.4%	0.50
State U. of New York at Buffalo (NY)	28.5%	12.8%	0.45
Ohio State U.-Main Campus (OH)	13.9%	10.3%	0.74
U. of Oklahoma Norman Campus (OK)	34.3%	18.5%	0.54
U. of Oregon (OR)	14.5%	7.7%	0.53
Pennsylvania State U.-Main Campus (PA)	16.5%	9.5%	0.58
U. of Rhode Island (RI)	23.1%	11.3%	0.49
U. of South Carolina-Columbia (SC)	38.2%	11.0%	0.29
U. of South Dakota (SD)	8.4%	6.3%	0.75
U. of Tennessee (TN)	24.6%	11.0%	0.45
U. of Texas at Austin (TX)	49.5%	26.6%	0.54
U. of Utah (UT)	9.6%	9.4%	0.98
U. of Virginia-Main Campus (VA)	28.8%	17.9%	0.62
U. of Vermont (VT)	3.7%	3.5%	0.95
U. of Washington-Seattle Campus (WA)	15.5%	11.2%	0.72
U. of Wisconsin-Madison (WI)	12.0%	8.1%	0.68
West Virginia U. (WV)	4.7%	5.9%	1.26
U. of Wyoming (WY)	9.2%	4.6%	0.50
Total (excluding LA and HI)	29.2%	13.4%	0.46

* Because Hurricane Katrina created highly unusual circumstances for Louisiana's higher education system in 2005, the state is omitted from all quartile analyses. ** Hawaii has unique demographics, in which Filipinos and Native Hawaiians are the primary underrepresented populations. Because the available data are not disaggregated to separate these groups, the state is omitted from the quartile analyses for race. Note: Minority students include African-American, Latino, and American Indian students.

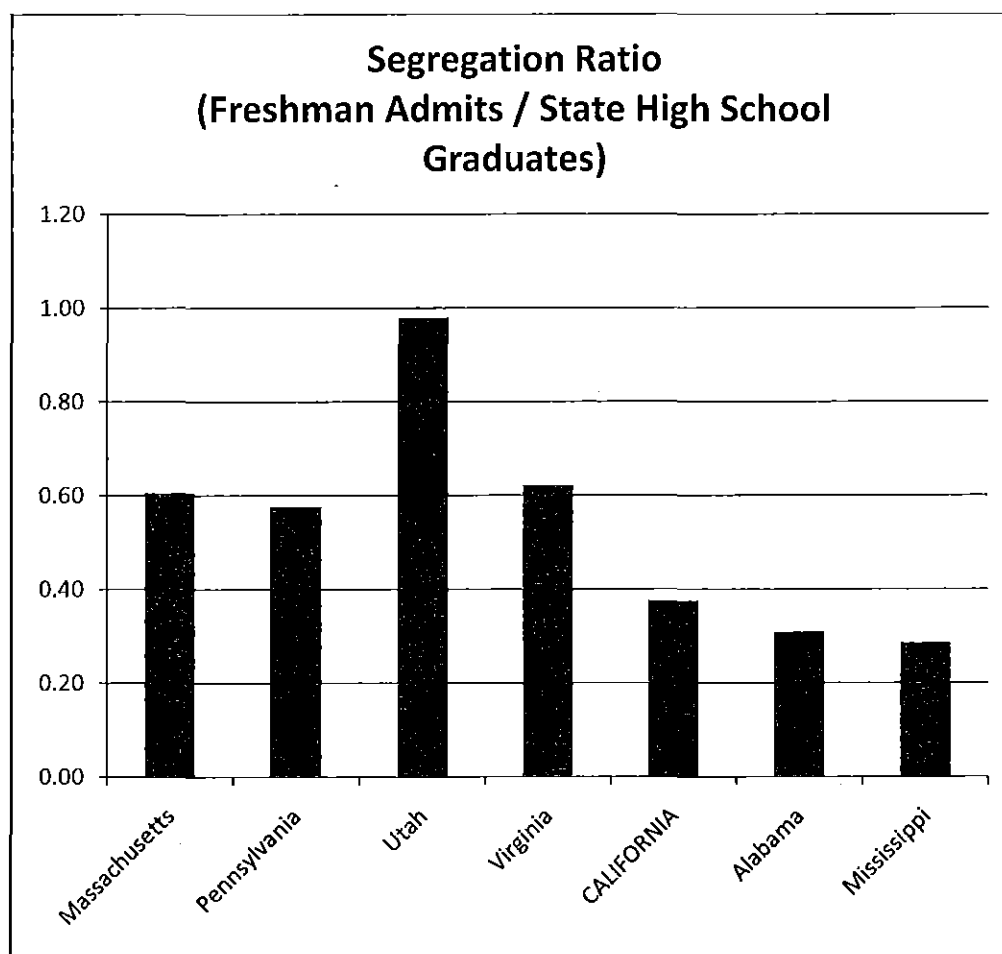
Progress Metric 1: Progress in Minority Student Access			
	4	5	6
	Spring '04 HS grads, % URM	Fall '04 Freshmen, % URM	Minority Student Access Ratio '04
U. of Alaska Fairbanks (AK)	24.9%	30.4%	1.22
U. of Alabama (AL)	33.3%	11.1%	0.33
U. of Arkansas Main Campus (AR)	24.1%	9.6%	0.40
U. of Arizona (AZ)	41.0%	21.3%	0.52
U. of California-Berkeley (CA)	44.0%	14.3%	0.33
U. of Colorado at Boulder (CO)	21.9%	9.3%	0.42
U. of Connecticut (CT)	21.2%	11.1%	0.52
U. of Delaware (DE)	31.3%	11.1%	0.35
U. of Florida (FL)	38.6%	23.3%	0.60
U. of Georgia (GA)	35.8%	6.8%	0.19
U. of Hawaii at Manoa (HI)**	6.4%	4.1%	0.64
U. of Iowa (IA)	5.7%	5.0%	0.88
U. of Idaho (ID)	9.2%	7.8%	0.85
U. of Illinois at Urbana-Champaign (IL)	26.6%	13.4%	0.50
Indiana U.-Bloomington (IN)	10.8%	8.6%	0.80
U. of Kansas (KS)	14.4%	9.6%	0.67
U. of Kentucky (KY)	10.7%	7.8%	0.73
Louisiana State U. and Agricultural & Mechanical College (LA)*	42.2%	12.7%	0.30
U. of Massachusetts Amherst (MA)	15.3%	8.2%	0.54
U. of Maryland-College Park (MD)	36.7%	20.0%	0.54
U. of Maine (ME)	2.4%	3.2%	1.33
U. of Michigan-Ann Arbor (MI)	15.2%	12.9%	0.85
U. of Minnesota-Twin Cities (MN)	7.7%	7.7%	1.00
U. of Missouri-Columbia (MO)	15.5%	9.0%	0.58
U. of Mississippi Main Campus (MS)	47.0%	12.1%	0.26
U. of Montana (MT)	9.1%	5.5%	0.60
U. of North Carolina at Chapel Hill (NC)	31.6%	16.2%	0.51
U. of North Dakota (ND)	7.2%	3.5%	0.49
U. of Nebraska-Lincoln (NE)	10.7%	6.4%	0.50
U. of New Hampshire-Main Campus (NH)	3.0%	4.0%	1.33
Rutgers U.-New Brunswick (NJ)	29.2%	19.4%	0.66
U. of New Mexico-Main Campus (NM)	58.2%	50.0%	0.86
U. of Nevada-Reno (NV)	26.4%	12.6%	0.48
State U. of New York at Buffalo (NY)	26.4%	12.9%	0.49
Ohio State U.-Main Campus (OH)	13.5%	10.1%	0.75
U. of Oklahoma Norman Campus (OK)	31.0%	15.7%	0.51
U. of Oregon (OR)	11.9%	6.6%	0.55
Pennsylvania State U.-Main Campus (PA)	15.0%	8.4%	0.56
U. of Rhode Island (RI)	17.6%	10.1%	0.57
U. of South Carolina-Columbia (SC)	40.4%	15.9%	0.39
U. of South Dakota (SD)	6.9%	4.2%	0.61
U. of Tennessee (TN)	21.7%	11.9%	0.55
U. of Texas at Austin (TX)	48.9%	22.5%	0.46
U. of Utah (UT)	8.0%	8.6%	0.83
U. of Virginia-Main Campus (VA)	27.7%	15.9%	0.57
U. of Vermont (VT)	2.7%	3.5%	1.33
U. of Washington-Seattle Campus (WA)	13.6%	9.7%	0.70
U. of Wisconsin-Madison (WI)	9.8%	7.0%	0.71
West Virginia U. (WV)	4.2%	4.7%	1.12
U. of Wyoming (WY)	7.8%	6.0%	0.77
Total (excluding LA and HI)	27.4%	12.1%	0.44

EXHIBIT 4B

Segregation Ratio at State Flagship Public Universities

(% of Freshman Admits compared to
% of State High School Graduates)

Fall 2007 Entering Class



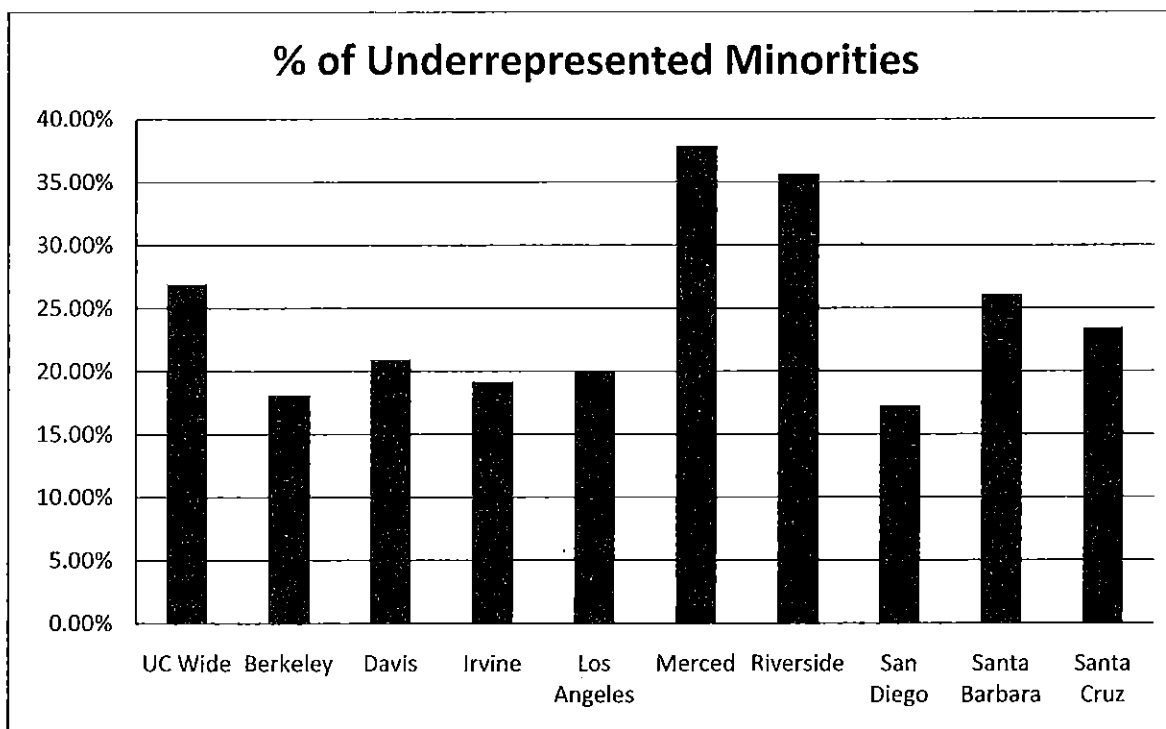
Data taken from The Education Trust. "Opportunity Adrift: Our Flagship Universities Are Straying from their Public Mission," p. 19, Fig. 18.

EXHIBIT 5

Percentage of Enrolled Freshmen Who Are Latina/o, Black, or Native American

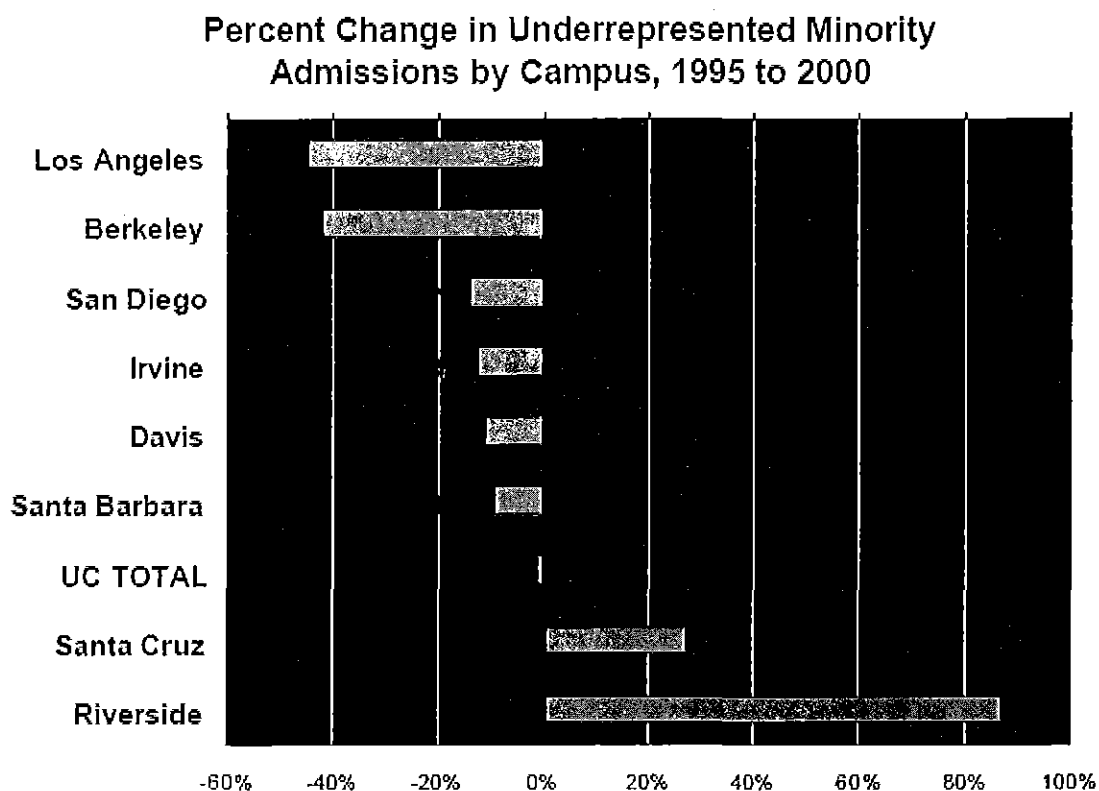
Comparison of UC Campuses

Fall 2008



Data from UC Office of the President, "Table 4 - New California Freshmen Admit Offers by Race/Ethnicity": <http://www.ucop.edu/news/studstaff.html>

EXHIBIT 6



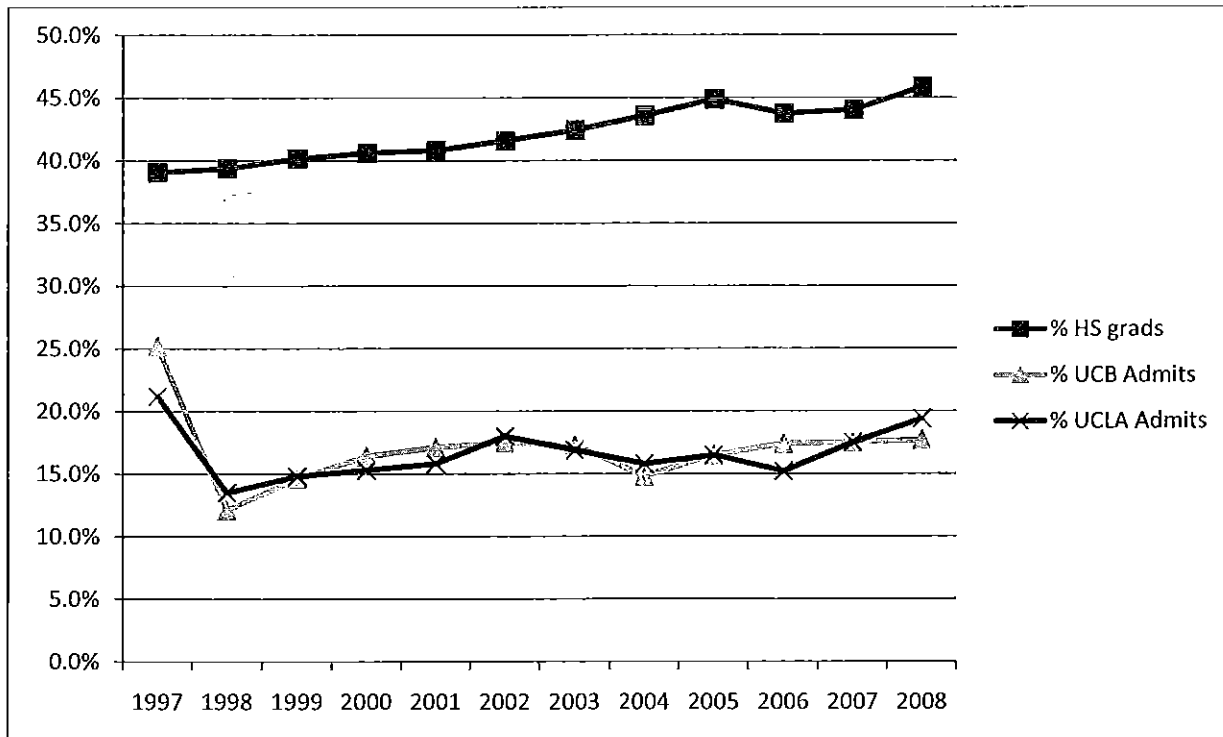
Saul Geiser, Carla Ferri, and Judy Kowarsky, UC Office of the President Academic Services, "Admissions Briefing Paper - Underrepresented Minority Admissions at UC after Sp-1 and Proposition 209: Trends, Issues and Options", p. 11)(November 2000):

<http://www.ucop.edu/sas/researchandplanning/admbriefpaper.pdf>

EXHIBIT 7

Trend Graph Comparing Percentage of California High School Graduates Who Are Latina/o, Black, or Native American to the Percentages of Admitted UC-Berkeley and UCLA Freshmen

Fall 2008 Entering Class



High School Graduate Data from Education Data Partnership and California Department of Education, "Graduates By Ethnicity in Public Schools": <http://www.ed-data.k12.ca.us/StudentTrendsNew.asp?reportNumber=128&fyr=2008&level=04&report=gradsbyethnicity>

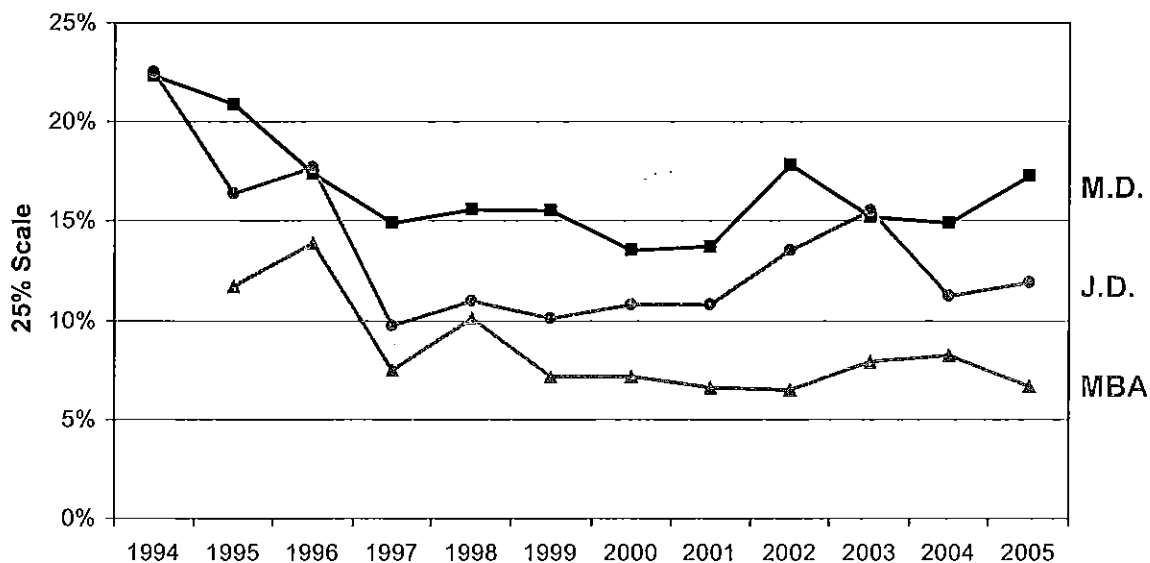
Freshman Admissions Data from UC Office of the President, "Table 4 - New California Freshmen Admit Offers by Race/Ethnicity": <http://www.ucop.edu/news/studstaff.html>

EXHIBIT 8

Trends Over Time

Even prior to SP-1 and Proposition 209 (i.e., prior to fall 1997), enrollments of URM students were low in UC professional schools. Following SP-1 and Proposition 209, URM applications to and enrollments in UC professional schools declined dramatically (figure 14).

Figure 14 - URM as a Percentage of New Enrollments in UC's Three Largest Professional Programs*
(U.S. Citizens and Permanent Residents Only)



*M.D. metrics do not include partnership programs (e.g. UCLA-Drew University), which would raise figures 1-2%.

J.D. metrics include UC Hastings. If Hastings is not included, the % URM increases (between 1-4% over 15 years).

MBA metrics do not include Executive MBA and Fully-Employed MBA programs. If included, the % URM decreases by less than 1%.

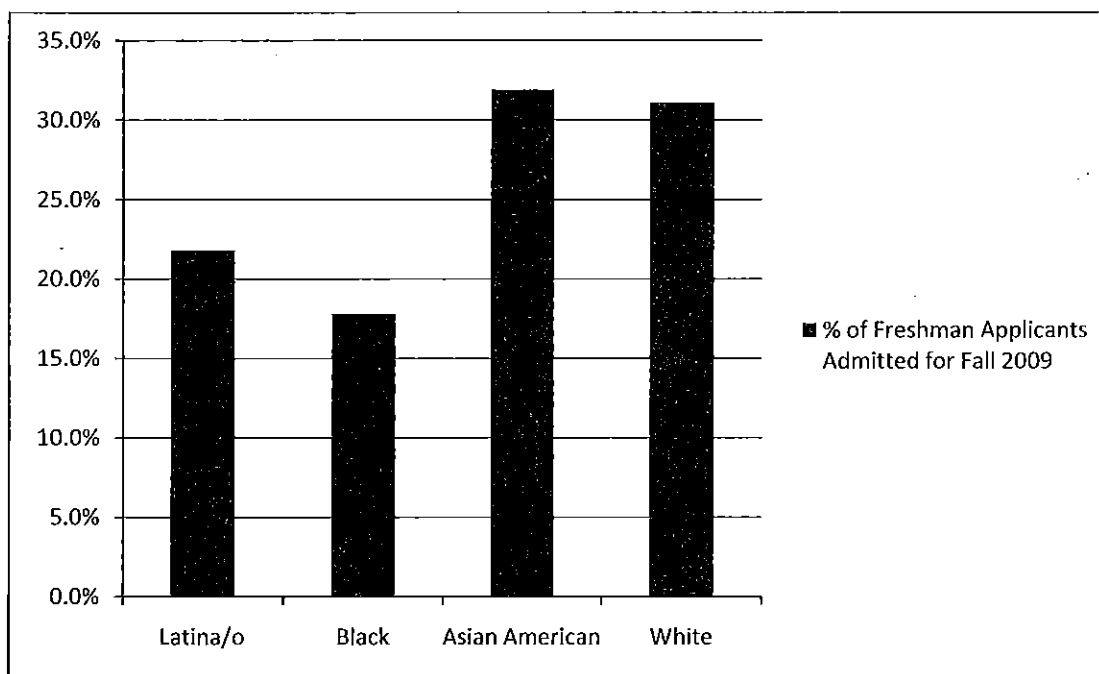
MBA data not available for 1994.

Reproduced from "Report of the Work Team on Graduate and Professional School Diversity," p. 14 (Sept. 2007).
<http://www.universityofcalifornia.edu/regents/regmeet/nov09/j2f.pdf>

EXHIBIT 9

Percentage of Freshman Applicants to UC-Berkeley Who Received Admission Offers

Fall 2009 Entering Class



Freshman Admissions Data from UC Office of the President: <http://www.ucop.edu/news/studstaff.html>