

The End of Affirmative Action and the Future of the Legal and Medical Professions in California

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The Supreme Court's landmark 2003 Grutter v. Bollinger decision sanctioned the use of affirmative action in admissions processes in institutions of higher education. It also gave voice to the many arguments about why such measures are essential. However, the decision left in place a ban on affirmative action in California, offering an opportunity to examine what happens when the use of such measures is proscribed. This article empirically examines the impact of that prohibition on applications and admissions to, and enrollments in the University of California's medical and law schools and finds that it had a significant and deleterious effect. The article assesses which ethnic groups have "won" and which have "lost" as a result of revamped admissions policies and examines the university's response to the decline in diversity on its campuses, concluding that it has not been enough to reestablish the desired level of diversity.

In June 2003, the Supreme Court handed down the historic *Grutter v. Bolinger* decision, in which it upheld the procedure by which the University of Michigan Law School considers race and ethnicity in its admissions decisions, a process commonly known as "affirmative action." This decision was welcome news to many of the administrators and faculty at the nation's medical and law schools who consider affirmative action to be an essential tool for ensuring a diverse student body. One state that did not have cause to celebrate, however, was California. This is because since 1995 the University of California (UC) has been barred from considering race and ethnicity in admissions decisions, first by a policy (SP-1) adopted by its Board of Regents, and then by a constitutional amendment (Proposition 209) approved by voters a year later.

Affirmative action in higher education is a process by which applicants' race or ethnicity is counted as a positive factor in determining their eligibility for admission to, in this case, medical or law school. Opponents of affirmative action believe that admissions

decisions should be based largely on merit as measured by such factors as college grade point average and scores on entrance exams. That is because these measures have been shown to correlate with a likelihood of succeeding in such programs. Proponents of affirmative action believe that it is also important to ensure that a substantial number of minorities are trained in medicine and law and that all professionals be trained in a diverse environment. Because some minority groups tend to score lower on standardized tests and earn lower GPAs, they are disproportionately rejected by such admissions criteria and therefore are underrepresented in medical and law school programs that rely on them. Proponents argue that affirmative action is needed to boost their representation.

The nature of this controversy makes it critical to understand, then, the effect that a ban on affirmative action has on applications, admissions and enrollments to institutions of higher education. Fortunately, as a result of the Supreme Court's recent attention to the issue, more scholars are beginning to empirically examine the difference that affirmative action makes in these institutions (see, for example, Long 2007 and Hicklin 2007).

The purpose of this article is to examine the ramifications of UC's anti-affirmative action policy a decade after its implementation in California's medical and law schools. It asks the following questions: (1) Did the proscription on the use of affirmative action have an impact on the proportion of applicants, admits and/or enrollees who are underrepresented minorities (URMs¹)? (2) If so, did some racial groups "win" while others "lost"? (3) If the ban did have an adverse impact on campus diversity, how has the University responded and has that response been successful in restoring diversity? This article begins by reviewing the wide array of literature documenting the importance of ensuring that all racial and ethnic groups have access to medical and legal educations.

Underrepresented Minorities in Law and Medical Schools

When the Supreme Court agreed to take the case involving the University of Michigan's affirmative action programs, 64 amici briefs, representing over 300 organizations, were filed on behalf of the University. In these briefs, academics, Fortune 500 companies, labor unions, and retired military officers, among others, urged the court to uphold the Michigan program, citing the importance of a well-educated and racially diverse workforce (Bell 2003). Some also pointed to the considerable evidence that students on diverse campuses receive a better education (see also Bowen and Bok 1998; Flores and Slocum 1997; Feinberg 1998; Business Higher Education Forum 2001; and Dorf, Kaplan, and Monk 2003) and show a greater commitment to community service and enhanced racial and cultural engagement than those in more homogenous settings (Gurin 2001). In that sense, the case's implications went beyond the educational setting to the public sector workplace (Sisneros 2004). In a more recent case involving the use of race as a factor in the assigning of students to a high school, the school district's brief reminded the high court of its holding that the enrollment of a critical mass of minority students promotes cross-racial understanding and breaks down stereotypes (*Parents Involved in Community Schools v. Seattle School District No. 1* (No. 05-908, 2006).

¹ URMs, as defined by the University of California, include American Indians, African Americans, and Chicanos/Latinos (with some exceptions). Non-URMs would then be Caucasians and Asian Pacific Islanders.

The legal and medical communities point to additional reasons why ensuring access to the training ground for these professions may be even more significant. One is that law and medical degrees are considered “powerful engines of social mobility” (Bowen and Bok 1998, 94). Another is that a lack of sufficient role models in professions such as medicine and law can create a self-perpetuating cycle where URMs are discouraged from pursuing these degrees (Ong 1996; Dower et al. 2001). Additional reasons specific to each profession are summarized in the following sections.

Law Schools

Kostka (1996, 280) argued that “[l]aw, more than any other profession, is inextricably linked to our social fabric, government, and political processes,” and that failing to ensure adequate representation of URMs in law schools would have a “tremendous ripple effect into every facet of society.” In her opinion for the court in *Grutter v. Bollinger*, Justice Sandra Day O’Connor reinforced this concept, stating, “In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity” (124 S. Ct. 35, 2003, 20).

Many legal professionals agree with her. A policy statement adopted by the Association of American Law Schools (AALS) in 1995 asserted that it is “morally necessary” to increase the number of underrepresented groups in law schools, the legal profession, and the judiciary. According to the AALS, legal training is a formal or informal prerequisite to many powerful positions in society, and government’s legitimacy will be questioned if there is not meaningful representation of every racial group in these positions. Nearly all judges, about half of governors, over one third of members of the U.S. House of Representatives, more than half of U.S. senators, and three of the last seven presidents have had law degrees (Dorf, Kaplan and Monk 2003, 5). The Association further noted that, particularly in light of the nation’s history of discrimination, it is essential that all be able to choose lawyers to represent them who share their heritage and background (Dorf, Kaplan and Monk 2003).

In its brief before the Supreme Court in the *Grutter* case, the American Bar Association noted that a decline in the number of lawyers from underrepresented groups would also coincide with a time when populations of these groups would increase in the country. “Such a disparity,” wrote the ABA, “may foster a perception of illegitimacy of the legal system” (ABA 2003, 5). The Association further cited survey data which found that that 92% of African American lawyers believe the justice system is racially biased and fewer than 20% of African American federal judges believe the justice system affords fair treatment to African Americans (ABA 2003, 17).

In their brief for the AALS in the *Grutter* case, Dorf, Kaplan and Monk (2003) argued that students would be better prepared to practice law if exposed to others who represented a variety of perspectives and experiences because diversity acts in subtle ways to shape the dialogue in and outside of the classroom. A Gallup survey conducted at the University of Michigan and Harvard Law schools supports this claim. More than two thirds of law students said that diversity enhances how they think about problems in the classroom, and three quarters said diversity has been a “clearly positive” element in their education (Orfield and Whitlaw 2001).

Medical Schools

Researchers also support the importance of diversity in enriching the educational experience of medical students. Learning medicine in a diverse environment provides greater understanding, cultural awareness, engagement in social and political issues, and an increased sense of civic responsibility (Milem 2003). “Cultural competence” improves patient satisfaction and trust, which also enhances communication and, therefore, decisions made by doctors (Association of American Medical Colleges 2003; Terrell 2003).

Of even greater consequence concerning the number of URM graduates from medical school is the potential impact on the delivery of medical care to low income, minority communities who are facing, by some accounts, a health care crisis (Milem 2003; see also Komaromy et al. 1996 and Grumbach et al. 2003). In their amicus brief filed in the *Grutter* case, the Association of American Medical Colleges and 14 other schools cited “empirical studies [that] consistently demonstrate that minority physicians—notably African Americans and Hispanics—are significantly more likely to practice in underserved areas comprised largely of minority and poor populations. These populations are precisely those that, on average, have the most severe health problems and medical needs” (AAMC 2003, 3). While the national average is one physician for every 387 people, in parts of some major cities, the ratio can be as much as 1/15,000. A number of studies have shown that minority doctors are more likely to serve these areas than white ones (Milem 2003; see also Conrad 1999; Cohen 2003; Cantor et al. 1996; and Alicea 1997). Komaromy et al. (1996) found that, after controlling for the ethnic make-up of a community, black and Hispanic physicians cared for significantly more black and Hispanic patients, respectively. When patients have a choice, they are more likely to choose a doctor who shares their ethnic and racial background, even controlling for the physician’s office location. The interaction between the patient and physician is improved when they are of the same race (“Diversity in the Physician Workforce” 2006). Further, black doctors have been shown to care for more patients covered by Medicaid, and Hispanic doctors to care for more uninsured patients. Minority doctors are also more likely to undertake research addressing the unique medical concerns of minority populations (Terrell 2003).

Medical Schools in California

There is also evidence that this issue is even more acute in California than in other states. Figure 1 shows that the diversity of the state’s population has grown and is expected to continue. While only 47% of the state’s population is white, 70% of its physicians are white. African Americans and Latinos comprise 7% and 32% of the population, respectively, but only 3% and 4% of doctors (Grumbach et al. 2003). In 2004, the ratio of Latino physicians to Latinos in the population was only 3/10,000, the lowest of any state in the nation (“Diversity in the Physician Workforce” 2006, 107). Meanwhile, a 1998 study found that 58% of URM graduates from California’s medical schools intended to practice in underserved areas, compared to 19% of white and other minority graduates (Grumbach, Mertz, and Coffman 1999). For these reasons, Komaromy et al. (1996) concluded that “dismantling affirmative action programs... may threaten health care for both poor people and members of minority groups” in California.

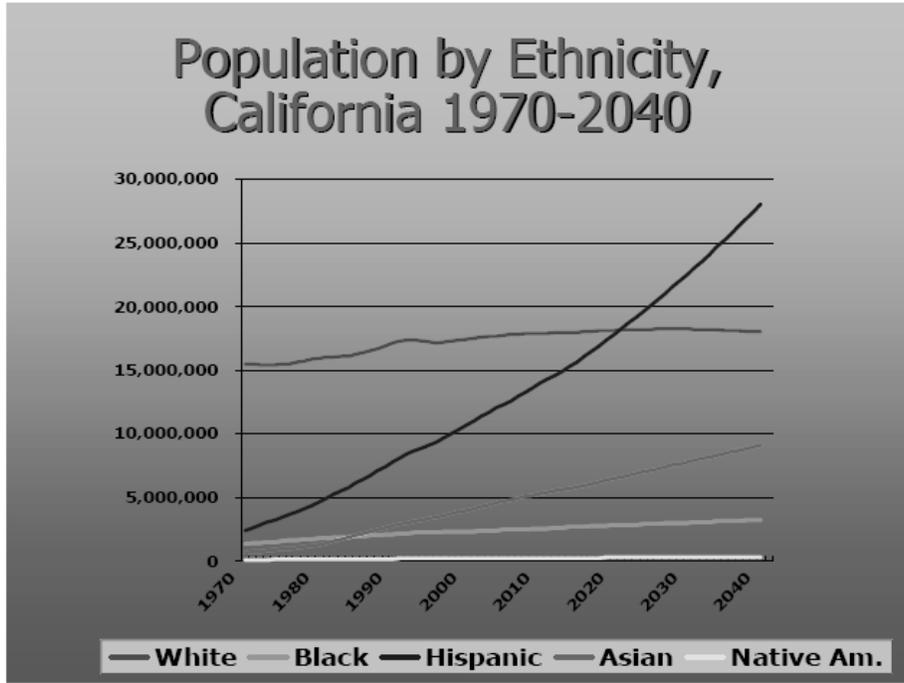


Fig. 1. The diversity of California's population.

Source: Demographic Trends: 1970-2040. Presentation prepared by the Research and Development Division, California Department of Social Services. <http://www.dss.cahwnet.gov/research/>. [Accessed January 12, 2006].

The UC Medical Student Diversity Task Force (2000) reported a similar finding. It cited a December 1995 study by the AAMC stating that five California medical schools (four of which were UC) ranked in the top eight schools nationally in the representation of URMs among 1990 to 1994 graduates. Since then the number has decreased significantly as a result of the Board of Regents' and the state's ban on affirmative action. In 2005, UC's University Committee on Affirmative Action and Diversity (UCAAD) issued a report which concluded, from its study, that the application pool for UC professional schools was becoming less diverse and that enrollment of URMs "remains alarmingly low" (2005, 2).

It is true that every year millions of dollars are invested in programs designed to increase the number of URMs entering the health profession. In California, these include outreach and student enrichment programs funded by the state legislature and administered by UC. However, Grumbach et al.'s evaluation of such programs concluded that "[d]espite the considerable resources invested in diversity programs, academic achievement and entry into the health professions by URMs have not increased significantly" (2003, 90). The ability to take race and ethnicity into account in admissions decisions is also essential to ensure an adequate supply of these students.

Why Affirmative Action?

Grumbach et al.'s pessimistic conclusion about the value of academic enrichment programs for increasing the number of URMs in the pipeline to the medical profession is one reason why many have argued that there are no "race neutral" means for achieving racially integrated law or medical schools (Bowen and Bok 1998; Dorf, Karlan, and Monk 2003; Association of American Medical Colleges 2003; Magnus and Mick 2000; Badiana 1997; Cancian 1996; Kidder 2005). This is especially the case when one considers that the nation's political leaders and judges are disproportionately drawn from the top law schools where competition for admission is fierce (Dorf, Kaplan, and Monk 2003; Bowen and Bok 1998).

The need to consider race and ethnicity stems in part from the difference in minority and majority students' scores on the Law School Admission Test (LSAT) law school and Medical College Admission Test (MCAT) medical school entrance exams. Since underrepresented minority students, on average, earn lower scores on these exams, a heavy reliance on these measures in the admissions process has the effect of rejecting a disproportionate number of minority applicants. The AAMC concluded, for example, that requiring URMs to have the same MCAT scores as white applicants would have resulted in an 80% reduction in minority admissions to medical schools in 1996 (cited in Grumbach et al. 2003, 85). A study of applicants to Boalt Law School at the University of California at Berkeley found that even after controlling for undergraduate GPA, graduation date, and undergraduate institution attended, African Americans, Chicanos/Latinos, and Native Americans trailed white classmates by 9.2, 6.8 and 4.2 points respectively on the LSAT (Kidder 2001, 11). One reason offered for this disparity has been termed "stereotype threat" or the impact of a negative stereotype on a group's performance on a test (Steele and Aronson 1995).

Meanwhile, the value of these tests in predicting performance in law and medical schools and subsequent success in these professions is controversial (Nix 1996; Kidder 2001; and Kosta 1996). Davidson and Lewis (1997) studied entrants under a special admissions program at the UC Davis Medical School over a 10-year period. This group generally had significantly lower MCAT scores and undergraduate GPAs than those admitted under the "regular" process. Both groups graduated at nearly the same rate (94% or more), completed their education in the same amount of time, and were equally likely to receive honors evaluations during their residency programs. This finding suggests these scholastic measures have limited utility in predicting success in medical school. A task force convened by the UCLA Law School was critical of the LSAT, pointing out that law school graduation is only weakly associated with test scores (UCLA Admissions Task Force 1997). A study of University of Michigan Law School alumni found no relationship between test scores and undergraduate GPA and achievement after law school (cited in Kaufmann 2006).

There is often more support for admissions policies that grant preference based on socioeconomic disadvantage rather than race (Swain 1996). However, the outcome has not been the same level of diversity as traditional race-based affirmative action programs (UCLA Admissions Task Force 1997; Moran 2000; Badiana 1997; and Cancian 1996). According to public statements by Dean Herma Hill Kay at UC's Boalt Law School, an experimental program that gave special consideration to qualified socioeconomically disadvantaged students primarily benefited whites and Asian

Americans (who are not underrepresented in law schools), and the program was abandoned after one year (Moran 2000). The UCLA Admissions Task Force (1997) reported the same results from its experiment with such criteria.

Affirmative Action on the UC Campuses

The UC professional schools' efforts to include minorities among their admits began as early as the 1960s, when the ideals of the Civil Rights Act of 1964 made it obvious that minorities needed better access to higher education. In 1968 the Association of American Medical Colleges called upon medical schools to increase their representation of students from underrepresented geographical areas, economic backgrounds, and ethnic groups, and later essentially proposed the use of quotas. At about the same time, several groups, including the Association of American Law Schools and the American Bar Association, formed the Council on Legal Educational Opportunity to increase representation of URMs in law schools. By the mid 1970s many of UC's medical and law schools were reserving specific numbers of seats for minorities (Welsh and Gruhl 2001).

Justice Powell's plurality opinion in the *Regents of the University of California v. Bakke* (1978) focused on the UC Davis Medical School's policy of reserving a specific number of seats for minority students. The decision struck down specific set-aside practices while allowing the consideration of race or ethnicity in admissions. This consideration was necessary, Justice Powell argued, for all students to achieve the educational benefits of a diverse student body. The decision caused universities to re-examine their admissions policies to bring them into conformance. The UCLA Law School, for example, developed diversity criteria that considered racial/ethnic background, foreign language ability, unusual life experiences, and economic disadvantage, along with applicants' probability of success in law school.

In June 1995, then Governor Pete Wilson signed Executive Order W124-95 to "End Preferential Treatment and to Promote Individual Opportunity Based on Merit." The following month, the Regents of UC approved SP-1, which prohibited the use of race, religion, sex, color, ethnicity and national origin as criteria for admission to the University or any program of study. Prior to this, the UCLA Law School's policy had been to admit approximately 40% of students under its diversity program (Martin 1997). In 1996, California voters passed Proposition 209, an amendment to the Constitution. It proscribed the state from "discriminat[ing] against, or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."² In 2001, the Regents rescinded SP-1 because they were concerned that it had created the impression that minorities were not welcome on UC campuses. This action was largely symbolic, of course, as Proposition 209 had achieved the same objective as SP-1.

Intergroup Competition

Competition for admission to UC's medical and law schools is intense. Each year, as many as 28,000 candidates apply for fewer than 600 seats in the medical schools and 19,000 for fewer than 900 places in the law schools. Recent studies have shown

² For an excellent analysis of the effect of SP-1 and Proposition 209 on admissions to the UC undergraduate programs, see Long (2007).

growing opposition from minority groups as well as whites to programs designed to benefit out-groups when there is competition for scarce resources (Lopez and Pantoja 2004). A simple self-interest model of inter-racial hostility suggests that such antagonism arises from a clash of material interests between racial groups (Bobo and Hutchings 1996). In this case, one would expect URMs, namely blacks, Latinos, and Native Americans to sense that the elimination of affirmative action has given an advantage to Caucasians, just as the latter believed affirmative action had the reverse effect before. In their research, Bobo and Hutchings found, of course, no such simple relationship, but rather that feelings of threat depend on the racial background “of who is doing the looking as well as on the background of who is being looked at” (1996, 965). Other research has found Asian Pacific Americans to be less opposed to affirmative action than whites, but not as favorable as to it as other minority groups (Kim and Lee 2001).

Prospects for conflict or cooperation between groups are affected by their perceptions of discrimination. Most Americans continue to believe African Americans and Latinos face barriers to equal opportunity. However while few believe that Asian Americans suffer discrimination, 40% of Asian Americans report that they have encountered biased treatment. This mismatch in perceptions suggests there is less opportunity for sharing common ground between Latinos, African Americans and Asians (Kim and Lee 2001).

This paper can only comment on these findings in the literature since data on the perceptions of those who have applied or considered applying to California’s medical and law schools are not available. However, some groups have taken their cases to university leadership. In 2001, Asian Pacific Americans at UC Berkeley produced a report entitled “Asian Pacific Americans at Berkeley: Visibility and Marginality” in which they criticized the lack of Asian Pacific Islanders (API) among upper management and faculty. They did not criticize any other group in the process of making their recommendations. Similarly, on the same campus, Chicanos and Latinos made a presentation in 2005 to Chancellor Robert Birgeneau. They highlighted their declining representation on campus since the end of affirmative action and contended that this had contributed to an atmosphere unwelcoming to Latinos. The students proposed a number of measures to ameliorate the situation, including providing additional resources for Chicanos and Latinos on the Berkeley campus. Again, there was no effort to criticize another group.

With this background in mind, the remainder of this paper is devoted to examining the impact of the decision to end affirmative action on the University of California’s law and medical schools and the university’s response.

Data and Methodology

Data on admissions, enrollments and applications to the University of California’s law and medical schools was downloaded from the UC Office of the President’s (UCOP) website. For law schools, data for each of these variables was available for the period 1993 to 2005. For medical schools, data were available for admissions and applications from 1991 to 2001. These data were entered into Excel spreadsheets to allow for an empirical examination of trends over time, before and after the implementation of SP-1. Trends were examined overall, as well as for each racial

group. Supplemental data for medical schools from 2002 to 2005 was obtained from the UCOP Office of Health Affairs and is presented and discussed in a separate section.

These quantitative data are augmented by qualitative data from interviews with UC officials and official documents obtained from UC websites. In the interviews, conducted during the fall of 2005, admissions officers were asked about their perspectives on the trends presented by the quantitative data. A canvass of the UCOP website, and further discussions with UC officials, revealed additional reports, such as that by the UCAAD and the Medical School Student Diversity Task Force, which shed light on the university's responses to the perceived level of diversity post SP-1. Together, the quantitative and qualitative data present a broad picture of how the ban on affirmative action has affected UC medical and law schools and how the university has responded.

Findings

Law Schools

Figure 2 displays the impact of SP-1 and then Proposition 209 on applications, admissions, and enrollments to UC's three law schools (at Davis, Berkeley, and Los Angeles). These three law schools combined have admitted between 2,500 and 2,700 students a year and individually enrolled between 674 and 821 each year during the years displayed.

By 1995 the proportion of applications for admission from URMs had begun to drop slightly and enrollments more dramatically. This is not surprising as the Regents actually adopted SP-1 in 1995, though it was not implemented until the following year. Once the policy was implemented, the effect was a dramatic drop in applications, admissions, and enrollments by URMs. Before the implementation of SP-1 in 1996, about 20% of applications were received from URMs. Minorities also comprised about 20% of those admitted and at least 20% of those enrolled. Since that time URMs have comprised no more than 15% of the applicant pool, and no more than 13% of those admitted. Except for a noticeable improvement in their enrollment in 2002 and 2003, they continue to represent no more than 13% of those enrolled.

Law school admissions officers interviewed for this paper noted that one of the obstacles to increasing applications by URMs is the negative climate that was created by SP-1 and Proposition 209; that is, that URMs have had the perception that they would not be welcome on campus. A further complication is the increase in tuition in recent years due to California's budget shortfalls. While some campuses are trying to counteract objectionable features by offering special preparation courses and financial aid, they cannot target that aid toward URMs as many private universities do. As a result, highly qualified URMs decline admission to UC law schools and go elsewhere.

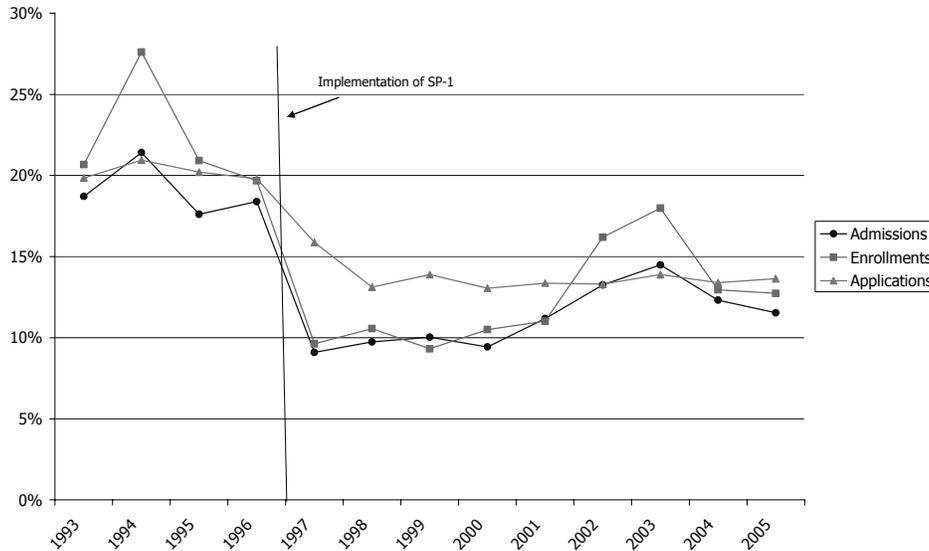


Fig. 2. Applications, admissions, and enrollments by underrepresented minorities in UC's law schools 1993-2005.

Source: UCOP

Figure 3 shows more concretely what occurred at the UC's flagship law school, Boalt Hall in Berkeley. Prior to the implementation of SP-1, the number of applications from URM had reached as many as 1,000 a year. With SP-1 there was an immediate sharp drop to about 600 applicants per year that lasted for 5 years. Beginning in 2001, the number began to climb and has once again reached the quantity that existed prior to SP-1. Similarly, before SP-1, out of the 800 to 860 students admitted each year, 160 to 180 were URM. The first year SP-1 was implemented, that number dropped to a low of 66. Since then it has climbed to as many as 129 URM in 2002, but has not reached pre-SP-1 levels. Prior to SP-1, 50 to 70 of the admitted URM enrolled in Boalt Hall, for a yield of about 1/3. The first year of SP-1, only 15 (11%) of admitted URM enrolled. The following year the number began to increase. Since then, the number of URM enrolling in Boalt Hall has fluctuated from a low of 25 in 1999 to a high of 57 in 2003.³ Still, the quantity of URM who accept the offer of admission has not quite reached pre-Proposition 209 levels. The director of admissions at Boalt indicated that the staff has devoted considerable resources to overcoming the negative message sent by the anti-

³ Figures 1 and 2 suggest that a higher number of URM than usual enrolled in law school in 2002 and 2003. This may be because higher than normal unemployment during those years created a greater impetus for those unemployed or fearing loss of jobs to apply to law school when what economists call the "opportunity cost" of doing so would be less. This also accounts for the spike in 1994. That recession ended by 1995, leaving little doubt as to the impact of SP-1 in subsequent years.

affirmative action policies, but the rule against affirmative action and the climate of hostility that minorities perceive as a result of Prop 209 make it difficult to persuade URM students who are admitted to actually enroll. School officials have also found it difficult to compete with other law schools that can offer the applicants greater financial aid.

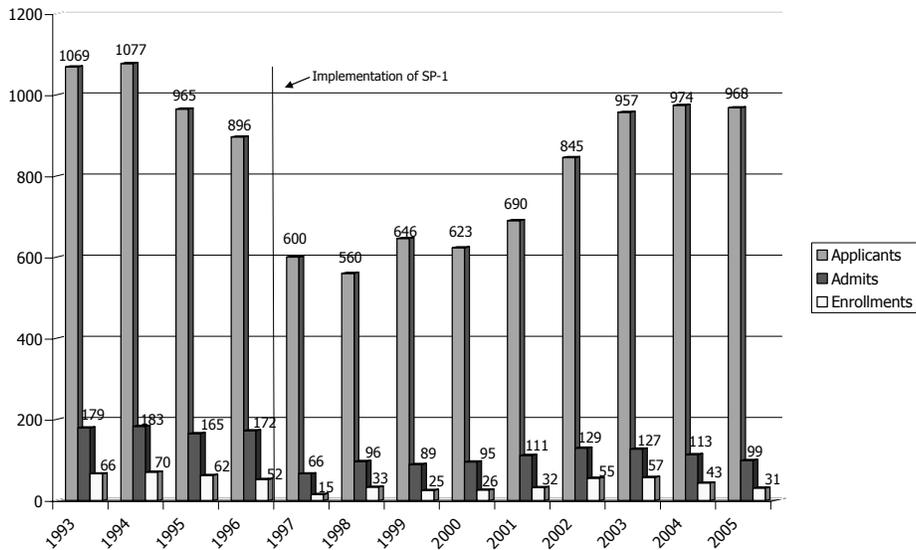


Fig. 3. Applications, admissions and enrollments by underrepresented students to Boalt Hall 1993-2005.

Source: UCOP

Finally, figure 4 compares the relative gains and losses encountered by each racial group as a result of the proscription of affirmative action. The literature notes that affirmative action is necessary to overcome the advantage that APIs and Caucasians have in admissions policies that give weight to undergraduate GPA and standardized test scores. Since the ban on affirmative action, the admissions decisions in UC professional schools have given considerable weight to these factors in order to maximize the potential that their graduates will score well on licensing exams (Report of Graduate and Professional Task Force 2003). Thus, it would be expected that white and API students would have gained the most in admissions after 1996.

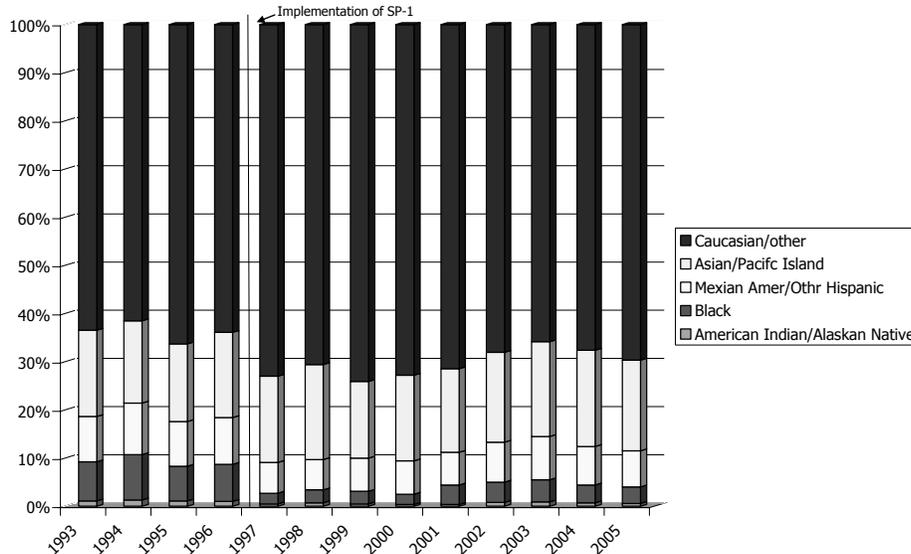


Fig. 4. Proportion of each racial group admitted to UC law schools 1993-2005.

Source: UCOP

Figure 4 shows the proportion of each racial group that was admitted by the UC law schools combined from 1993 to 2005. It suggests that it was mainly white applicants who gained at the expense of Latino and black students, at least initially. Between 1993 and 1996, about 65% of those admitted were white. Subsequently, the proportion rose into the low 70s, falling as low as 66% again only in 2003. API students do not seem to have benefited, as they represented only 16% to 20% of those admitted during the entire 13-year period. Hispanics bore some of the brunt initially. Whereas they initially represented 9% of those admitted, that number fell to 6% and returned to 9% only in 2003. Blacks, however, have experienced the greatest hardship. Comprising 8% of admissions in 1996, their share dropped to just 2% in 1997, and they have not recovered since. American Indians have also suffered, though their numbers are so few as to hardly register. Representing only 1% (about 30 students) initially, they now comprise less than 1% (under 20 students, on average) of those admitted each year.

There is no clear trend whereby one racial group has overwhelmingly gained admission at the expense of others following the ban on affirmative action. However, the nature of the admissions process means that groups who score better on standardized tests and earn higher GPAs will, in the long run, earn more seats in California’s prestigious law schools than those who do less well on these measures.

Medical Schools

UC has five medical schools, located in Davis, Los Angeles, Irvine, San Diego and San Francisco. Together these schools admit about 1,200 students a year and enroll 570. Only about 5% of those who apply each year are admitted.

Figure 5 shows the proportion of URM applications, admissions, and enrollments of underrepresented students by these schools between 1991 and 2001.⁴ Until the implementation of SP-1, the proportion of applications submitted by URMs was between 10% and 12%. Since then, less than 10% of applicants have been URMs. While this isn't a dramatic difference, it is notable given the competitive nature of medical school admissions across the country.

The proportion of URM students admitted began to decline in 1994, and continued to do so until 1997. It is not clear why this trend would have appeared even before the implementation of SP-1. One possibility is that discussion of SP-1 deterred better qualified URMs from applying to UC schools, decreasing the competitiveness of the URMs who remained in the applicant pool. While a greater proportion of URMs were admitted between 1999 and 2001 than between 1996 and 1998, the proportions have not reached the levels of twenty years before.

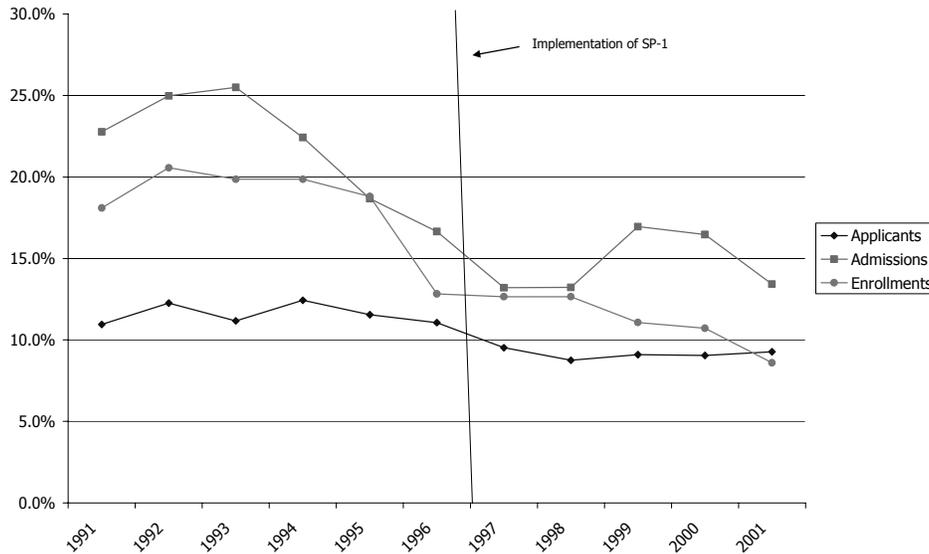


Fig. 5. Applications, admissions and enrollments by underrepresented minorities in UC’s medical schools 1991-2001.

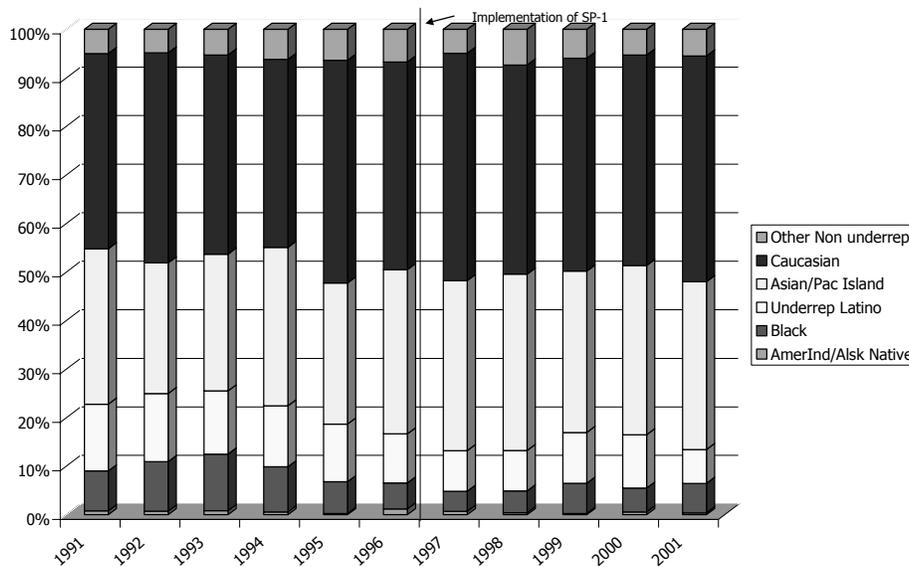
Source: UCOP

The proportion of URM enrollments started to decline slightly in 1995, but plunged precipitously in 1996 when the Regents voted on SP-1. The proportion of enrolled URM students reached an all-time low of 13.4% in 2001—half of what it was in 1993.

⁴ Data for medical schools is publicly available on the UCOP website only through 2001. Data for 2002 to 2005 was obtained from another source and is reported separately.

Figure 6 shows the proportion of admissions for each racial group every year between 1991 and 2001. It shows that blacks and underrepresented Latinos⁵ lost ground following the implementation of SP-1. Prior to the implementation of SP-1 blacks normally represented 8 to 12% of those admitted; since then they have represented only 4 to 6%. Prior to SP-1 underrepresented Latinos represented 12 to 14% of admitted students; since then they have represented 7 to 11%. The proportion of Caucasians admitted has grown from 40% to as high as 47% in many years. The proportion of Asian Pacific Islanders continues to fluctuate. Before SP-1, it ranged from 27% to 34% a year; since then it has averaged about 35% a year. Fewer than 10 Native Americans are admitted each year. The one exception was 1996 when an unusually high number of Native Americans applied and 14 were admitted. As with the law students, it is those groups who tend to earn higher undergraduate GPAs and better scores on the MCAT that gain the advantage when admissions officers must place primary emphasis on these qualifications.

Fig. 6. Proportion of each racial group admitted to UC medical schools 1991-2001.



Source: UCOP

The UC Office of the President has not made medical school applicant/admissions/enrollment data available on its website since 2001. Even a 2005 analysis provided by the UCAAD (discussed below) relies only on medical school data

⁵ Mexican Americans, Chicanos, and those from Puerto Rico proper are considered underrepresented Latinos and, while reported separately in the UC data system, are combined in this chart. Other Hispanics are considered non-underrepresented, and so are combined with “Other Non underrep” in this chart.

through 2001. However, this article includes a source for data on medical school applications, admissions, and enrollments from the Office of Health Affairs for the period 2002 to 2005. Those supplemental data are presented in table 1.

Table 1 Approximate representation of underrepresented students among applicants, admissions, and enrollments in UC's principal medical schools 2002-2005

	2002**	2003	2004	2005
Applicants	14.7%*	13.7%*	10.9%*	10.4%
Admissions	21.3%	13.7%	16.9%	20.5%
Enrollments	16.3%	16.5%	16.3%	

*Not included in the calculation of these percentages are the numbers of Caucasians and Asian Pacific Islanders who applied to UCSF because these numbers were not available.

**These percentages include numbers from UCSF that were artificially low and so may not be accurate.

Source: UCOP Office of Health Affairs

As noted in the table, there are a number of problems with these data that make interpretation problematic, and for that reason they are discussed separately from the data presented in figures 5 and 6. While the numbers suggest that the proportion of applications received from URMs jumped in 2002 and 2003 from where it had been since 1997 (under 10%), it is also the case that there are inconsistencies in these data. These data do not include Caucasians and Asian Pacific Islanders who applied to UCSF in three of the four years. This means that what are typically 4000 to 5000 students out of approximately 23,000 applicants to UC medical schools each year are excluded from the total. As a result, the proportion of applicants who are underrepresented is likely to be overstated. Another problem not noted in the table is that these data aggregate all Latinos/Hispanics into an "underrepresented" category. In fact, UC policy is that Latinos who are Mexican, Chicano, or from Puerto Rico proper are considered underrepresented, while "other" Hispanics are not (see footnote 4). However, these "other" Hispanics typically comprise only about 2 to 3% of applicants to California's medical schools.

There are fewer problems with the admissions data, if one disregards 2002 (see the first footnote in table 1) and the 3 to 4% of other Hispanics who typically comprise non-underrepresented admissions. The numbers shown in table 1 could then represent a real increase in proportion of URMs admitted to California medical schools. Similarly, the enrollment data presented in table 1 suggests a leap from the previous downward trend displayed in figure 4. If accurate, the proportion of URMs admitted to UC medical schools, which reached an all-time low of 9% in 2001, leaped to 16% in 2002 and remained there for the next two years. These could be reasons for optimism. However, it must be recalled that these data have not been prepared for public access in the way that the previously discussed data have. Another reason to suspect that there hasn't been the

dramatic turnaround that some of the data in table 1 suggest is that UC has not backed off its efforts to try to increase diversity on its campuses in other ways. It is those efforts that are examined next.

The University's Response to the Decline in Diversity

The UC system, the State of California, and various national public and private organizations have invested in outreach and academic enhancement efforts designed to improve the academic achievement of URMs. The goal is to create, in the long run, a wider, highly qualified applicant pool by raising minorities' ability to earn high GPAs and test scores. If these programs succeed, ultimately affirmative action will not be necessary. URMs will stand the same chance as non-URMs of being selected based strictly on "merit-based" criteria. These efforts include programs that provide academic preparation, skill building, counseling, test preparation and mentorship for URMs at the elementary, secondary school, and college levels, as well for students newly admitted to the UC system. As previously noted, however, it is not clear that these programs have been effective (Grumbach 2003; see also Long 2007). Programs targeted specifically at medical and law students include the following.⁶ These programs are race-neutral but may include admission criteria that consider, for example, whether a candidate has demonstrated a commitment to fostering the value of a diverse learning environment:

- The UC Davis Law School offers a "boot camp" for undergraduates to help them prepare their law school applications, as well as a comprehensive law school preparation program for undergraduates in their junior and senior years.
- The UC Davis Medical School offers MCAT preparation courses and conferences on how to prepare for medical school.
- The UC Irvine Medical School has a Program in Medical Education for the Latino Community that provides specialized training for future physicians committed to providing care to underserved Latino communities in California.
- The UCLA Medical School offers a Pre-Medical Enrichment Program for disadvantaged students to improve their chances for admission, as well as a re-application program for disadvantaged students who were unsuccessful in gaining admission in the past.

During the 2001 to 2003 academic years, the UC Academic Council created a task force to review the admissions procedures for graduate and professional programs. The task force reported that the professional schools engage in a comprehensive review of all applicants. This system is desirable because it means that no one is automatically admitted or rejected based on a single criterion (such as a threshold undergraduate GPA

⁶ For a fuller description of medical school outreach programs, see Medical School Diversity Task Force (2000).

or test score). It also is a means for ensuring a diverse array of students will be admitted because a range of qualities and experiences can be considered.

However, the task force also found that since acceptance to the professional schools, such as law and medicine, is highly competitive, a strong preference is given to candidates with a high likelihood of completing the degree and passing the licensing exams. Therefore, the committee gives considerable weight to GPA and standardized test scores when reviewing medical and law school applications. If those are low, the rest of the application has to be “exceptional” for the candidate to be offered admission. The task force further noted that Proposition 209 prevents the university from using generous fellowships and other financial support “to enhance the diversity of its graduate student population.” That is, the UC programs cannot compete with other prestigious institutions that are able to offer financial support to URMs. The UC programs must make greater efforts to identify and encourage URM candidates (Report of Graduate and Professional Task Force 2003, 5).

The chair of the Academic Council then asked the UCAAD to explore the area of low minority enrollment in UC professional and graduate programs further. The UCAAD agreed that “[d]eclining applications to UC graduate programs and professional schools presents a major problem and the applicant pool appears to be becoming less diverse as it declines” (UCAAD 2005, 2). The committee made the following recommendations to counteract what it found to be the “alarmingly low” enrollment of URM students and the declining and less diverse applicant pool:

- UC should increase the number of underrepresented minority faculty throughout the system in order to widen the networks for graduate student recruitment.
- Graduate and professional programs must monitor their admissions procedures, look for “best practices” in the admissions process, and work to recruit a diverse class in good faith.
- The comprehensive review that is used to evaluate applicants for admission must be conceptualized so that it includes the value of diversity. The UCAAD concluded from its analysis that the anti-affirmative action policies had sent a public message about the “[lack of] hospitality of the UC system ahead of and beyond its policy implications” (2005, 8).
- UC should adopt a set of guiding principles that signal a clear commitment to the consideration of diversity in the admissions process.

The university’s effort to restore desired levels of diversity on its campuses has also included high-level expressions of support. Recently, for example, UC Berkeley Chancellor Robert Birgeneau created a new post, Vice Chancellor for Equity and Inclusion, with a \$4.5 million budget (Matier and Ross 2006). In the summer of 2006, the UC academic senate and the school’s president also endorsed the UC-wide “Diversity Statement” that appears as an appendix to this article

It is clear then that top UC officials continue to be concerned with what they consider to be an unacceptably low level of diversity in their medical and law schools in

the wake of the ban on affirmative action. This concern stems not only from the schools' inability to consider race or ethnicity as factors in admissions decisions; it is also because those factors cannot be considered in awarding financial aid. Further, university officials believe the ban has discouraged many otherwise highly qualified underrepresented minority applicants from applying, or enrolling if admitted, due to perceptions of an unwelcome environment in the UC system. Mark Long's (2007) analysis of the effect of Proposition 209 on undergraduate enrollment on UC (and other university) campuses has produced an equally pessimistic conclusion: SP-1 and Proposition 209 had a significant and deleterious effect. Moreover, to date there is no evidence that any alternative to affirmative action has compensated for the consideration of race and ethnicity.

Conclusions and Implications for Further Study

The literature reviewed in this article suggests many reasons as to why diversity in medical and law schools is important. It is vital that programs train URM medical and legal professionals who can provide the best medical care and legal representation to currently underserved communities. The best kind of training is that which takes place in diverse classrooms. The quantitative data presented here show that the ban on affirmative action in California's medical and law schools has had a demonstrable and detrimental impact on the University of California's ability to provide this kind of education. UC law schools have experienced dramatic declines in applications from, and admissions and enrollments of URMs, downturns from which these institutions have not recovered. There has been a similarly unfavorable effect on UC medical school admissions and enrollments, with applications less affected, at least through 2001. While the supplemental data obtained for the subsequent three years suggests that the proportion of minority admissions and enrollments may have improved, there appears to be no corroborating evidence for this conclusion. Additional research is required to ascertain whether the trends observed through 2001 have continued in the medical schools or whether they have changed direction and, either way, what accounts for the changes.

Some of the reasons for post-Proposition 209 developments are clear. One is that the university law and medical admissions processes rely heavily on undergraduate GPA and standardized test scores and URMs have historically not done as well on these tests as whites and Asian Pacific Islanders. It is for that reason that these two groups were the "winners" of the coveted seats once the ban on affirmative action took effect. University officials asked to study the problem and make recommendations have seemed reluctant to tinker with the test score requirement. Instead, the UC system has responded by investing in academic enrichment programs and offering test preparation courses to raise the likelihood that those who traditionally do less well on standardized tests will improve. Unfortunately, it is not clear that these measures have had any major impact on increasing URM's scores. Another question for further study is whether or not there exist programs that can close the test score gap for URMs, thereby reducing their disadvantage in admissions decisions. Alternatively, are there admissions criteria that would satisfy those who expect such decisions to be based solely on "merit" and, simultaneously, do not disadvantage URMs?

The second reason why these UC programs have not been able to admit the desired number of URMs is that SP-1 and Proposition 209 have tarnished the university system's image. At least, that is clearly what many university officials believe. In this

respect the proposed solution has been to try to change the university's image from one that is anti-diversity to one that embraces all ethnic groups. A recent effort in this regard was the university's endorsement of a diversity statement (see the appendix). Further research will be required to assess whether this kind of public statement has a positive effect on increasing the numbers of applications and enrollments of underrepresented minorities.

On a final note, in the case of *Parents Involved in Community Schools v. Seattle School District No.1* (No. 05-908, 2006), the Supreme Court struck down the consideration of race in the assignment of students to primary and secondary schools. While leaving the *Grutter* decision intact, the court sent the message that it would continue to closely scrutinize any program that takes race into account, even in an educational context. For UC and other university officials, this was not welcome news.

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Appendix

**UNIVERSITY OF CALIFORNIA
DIVERSITY STATEMENT**

**RECOMMENDED TO THE UNIVERSITY OF CALIFORNIA BY THE
ACADEMIC SENATE OF THE UNIVERSITY OF CALIFORNIA**

Adopted by the Assembly of the Academic Senate May 10, 2006
Endorsed by the President of the University of California June 30, 2006

The diversity of the people of California has been the source of innovative ideas and creative accomplishments throughout the state's history into the present. Diversity—a defining feature of California's past, present, and future—refers to the variety of personal experiences, values, and worldviews that arise from differences of culture and circumstance. Such differences include race, ethnicity, gender, age, religion, language, abilities/disabilities, sexual orientation, socioeconomic status, and geographic region, and more.

Because the core mission of the University of California is to serve the interests of the State of California, it must seek to achieve diversity among its student bodies and among its employees. The State of California has a compelling interest in making sure that people from all backgrounds perceive that access to the University is possible for talented students, staff, and faculty from all groups. The knowledge that the University of California is open to qualified students from all groups, and thus serves all parts of the community equitably, helps sustain the social fabric of the State.

Diversity should also be integral to the University's achievement of excellence. Diversity can enhance the ability of the University to accomplish its academic mission. Diversity aims to broaden and deepen both the educational experience and the scholarly environment, as students and faculty learn to interact effectively with each other, preparing them to participate in an increasingly complex and pluralistic society. Ideas, and practices based on those ideas, can be made richer by the process of being born and nurtured in a diverse community. The pluralistic university can model a process of proposing and testing ideas through respectful, civil communication. Educational excellence that truly incorporates diversity thus can promote mutual respect and make possible the full, effective use of the talents and abilities of all to foster innovation and train future leadership.

Therefore, the University of California renews its commitment to the full realization of its historic promise to recognize and nurture merit, talent, and achievement by supporting diversity and equal opportunity in its education, services, and administration, as well as research and creative activity. The University particularly acknowledges the acute need to remove barriers to the recruitment, retention, and advancement of talented students, faculty, and staff from historically excluded populations who are currently underrepresented.

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