

**Filipino and Native
Hawaiian Pacific Islander
Representation at UC Santa
Barbara in a Post-
Proposition 209 World**

By

Angela Kim

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Chapter 1: Introduction

On November 5, 1996, Proposition 209 passed in California with 54.6% of voters voting “Yes”, and 45.4% of voters voting “No”.¹ Proposition 209, added in Article 1, Section 31 of the California Constitution, stated the state and any subdivisions or instruments of the state— any city, county, public university system, school districts, including the University of California and the California State schools—could not “discriminate against, or grant 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 Proposition 209 was enforced in the admissions processes of all public institutions in California, including the University of California system, in the Fall of 1998.³ For the purposes of my thesis, due to data collection limitations, I focus specifically on UC Santa Barbara and the effects Proposition 209 had on its rates of admissions. With Proposition 209’s implementation, I ask: was there a significant change in the rates of admissions at UC Santa Barbara after the implementation? I contribute to the current state of knowledge by providing a more in-depth study of Proposition 209’s effects on rates of admissions for specific populations within the Asian American Native Hawaiian Pacific Islander (AANHPI) population, specifically the Filipino and Native Hawaiian Pacific Islander (NHPI) populations. With these populations in mind, I ask: Did the implementation of Proposition 209 affect Filipinos and Pacific Islanders more than other groups at UC Santa Barbara? Further, did

¹ Summary of Votes Cast for Offices and Measures (1996) (California Secretary of State) Available at <http://elections.cdn.sos.ca.gov/sov/1996-general/summary-of-votes.pdf>

² California. Const. art. I, §31.

³ Douglass, John A. “A Brief of the Events Leading to SP1.”

Proposition 209 have a bigger effect on the Filipino and NHPI groups' rates of admissions versus the White group's during the years 1994-2017?

The negative effects Proposition 209 had on the African American, American Indian, and Latinx student populations are well documented, as shown by the range of scholarly literature to widely-read newspapers to amicus curiae briefs submitted by the University of California Office of the President (UCOP), among other sources.⁴ The UC system in its establishment under the Organic Act of 1868 stated that "it shall be the duty of the Regents, according to population, to apportion the representation of students, when necessary, that all portions of the State shall enjoy equal privilege therein."⁵ Therefore, since its creation, the UC system was meant to proportionately represent California's diverse population. In the existing literature and UCOP publications, the African American, American Indian, and Latinx populations are referred to as the underrepresented minorities (URM) in higher education.⁶ In the discussion of the effects of Proposition 209 on the traditional URMs, the counterpart to these URM students are the White and Asian students, who are assumed to be more privileged, proportionally

⁴ See Card, David and Alan B. Krueger, "Would the Elimination of Affirmative Action Affect Highly Qualified Minority Applicants? Evidence from California and Texas." See also Brief of the President and the Chancellors of the University of California as Amici Curiae in Support of Respondents, *Schuetz v. Coalition to Defend Affirmative Action, Integration and Immigration Rights and Fight for Equality by Any Means Necessary (BAMN), Et Al.*, 570 U.S. (2014). See also Brief of the President and the Chancellors of the University of California as Amici Curiae in Support of Respondents, *Fisher v. University of Texas at Austin*, 570 U.S. (2015). See also Santos, Jose L, et al. "Is 'Race-Neutral' Really Race-Neutral? Disparate Impact Towards Underrepresented Minorities in Post-209 UC System Admissions." See also Contreras, Frances. "The Reconstruction of Merit Post-Proposition 209." See also Fessenden, Ford, and Josh Keller. "How Minorities Have Fared in States With Affirmative Action Bans" for visuals.

⁵ Organic Act of 1868, 244 Statutes of California §§ 1-26 (1867-1868)

⁶ See Antonivics, Kate and Ben Backes, "The Effect of Banning Affirmative Action on College Admission Rules and Student Quality." And Brief of the President and the Chancellors of the University of California as Amici Curiae in Support of Respondents, *Schuetz v. Coalition to Defend Affirmative Action, Integration and Immigration Rights and Fight for Equality by Any Means Necessary (BAMN), Et Al.*, 570 U.S. (2014)

represented, and high-achieving.⁷ This perception of the AANHPI aligns with the model minority myth (MMM), a stereotype that defines the group, especially Asian Americans, as a “monolithically hardworking racial group whose high achievement undercuts claims of systemic racism made by other racial minorities populations, especially African Americans”(Poon et al. 2016, 469). Poon et al. (2016), explain how the MMM was rooted in systemic racism, intended to highlight the deficits of other minorities by using the Asian American population as a middleman minority, placing them in a racially triangulated⁸ bind between Whites and other minorities of color (473). According to Claire Jean Kim (1999), a process called “relative valorization” led to Asian Americans being praised as the “model minority” that had overcome past discrimination on their own and thus emerged much more self sufficient and meritorious than their African American counterparts (107). The second part to Kim’s theory of relative valorization was that while simultaneously being relatively valorized by the White population, they were also culturally ostracized as perpetually foreign and unassimilable by the White population (Kim 1999, 107). As pointed out by Poon et al. (2016) and Claire Jean Kim (1999), the crucial factor about the MMM was that it pitted the Asian American minority against another minority, typically African American—a process called “racial wedging”—while preserving the hegemonic White supremacy in control (Poon et al. 2016 473; Kim 1999, 109). “Therefore, the MMM, through the process of racial triangulation, bolster[ed] cultural racism and color-blind racist ideology by discrediting one racially minoritized group’s real struggles with racial barriers and discrimination

⁷ Contreras, Frances E. “The Reconstruction of Merit-Proposition 209.”

⁸ Concept of “racial triangulation” first introduced in Claire Jean Kim’s “The Racial Triangulation of Asian Americans.” (1999).

through the valorization of oversimplified stereotypes of another racially minoritized group” (Poon et al. 2016, 474). Racially triangulating Asian Americans vis-à-vis Whites and African Americans functioned not only as a racial wedge between minorities, but also as a way to support color-blind policies, such as Proposition 209, emphasizing the idea of merit over race-conscious ideologies (Poon et al 2016, 474). When this value of merit is emphasized through the MMM and relative valorization of Asian Americans, the ideology of anti-blackness is also emphasized (Poon et al. 2017, 96).⁹ By painting seemingly positive stereotypes of the Asian American group relative to the African American group, the white authors of the stereotype critique the deficiencies of the African American while maintaining control of the narrative. It is equally as crucial to note, that nowhere in this discourse is the Pacific Islander group explicitly mentioned in the MMM, yet when they are aggregated with the Asian American group, they too become subject to the harmful stereotype. Perhaps due to these assumptions that the AANHPI populations are high-achieving and successful, there exists few studies on the effects of Proposition 209 on specific AANHPI categories, and zero studies on the effects specifically on the Filipino and NHPI populations.

In addition to the MMM, as previously mentioned, the homogenization of Pacific Islander with Asian American and the general aggregation of the AANHPI category is problematic. According to the Office of Management and Budget (OMB), Asian American means a person with origins in the Far East, Southeast Asia, or Indian subcontinent with countries including Cambodia, China, India, Japan, Korea, Malaysia,

⁹ Another work by Poon, OiYan, et al. called “Count Me In!: Ethnic Data Disaggregation Advocacy, Racial Mattering, and Lessons for Racial Justice Coalitions.”(2017)

Pakistan, and the Philippines.¹⁰ First, the usage of the monolithic Asian category neglects to acknowledge the diversity and existing disparities within the mainland Asian group. Secondly, the use of the label “Asian” in its pan-ethnic nature, which also encompasses the Pacific Islander group, completely disregards the separate existence of a population with entirely separate origins from that of Asians. According to the OMB, Pacific Islander means a person with origins in any of the peoples of Hawaii, Guam, Samoa, Polynesian Islands, Micronesian Islands, Melanesian islands, or other Pacific Islands.¹¹ Michael Perez (2002) argues this homogenization of Pacific Islander and Asian is a central issue for Pacific Islanders because it inadvertently fails to acknowledge the Pacific Islanders’ indigenous self-determination (471). Labeling Pacific Islanders as Asian, subjects the Pacific Islander groups under the same racialized stereotypes used against the Asian group, such as the MMM, without the lived experience (Perez 2002, 471). In the context of the thesis, using the aggregate population data to demonstrate a specific population’s proportionality to the state is also misleading. Therefore, my thesis studies the effects of Proposition 209 on all populations’ rates of admissions compared to those of White students, my selected control group, with a focus on Filipino and NHPI populations. As I focus on the Filipino and NHPI populations rates relative to the control

¹⁰ Office of Management and Budget (OMB) Directive No. 15 Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997), no longer available at https://www.whitehouse.gov/omb/fedreg_1997standards. Retrieved from U.S. Census Bureau (2010). *The Asian Population: 2010*. Available at: <https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf>

¹¹ Office of Management and Budget (OMB) Directive No. 15 Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997), no longer available at https://www.whitehouse.gov/omb/fedreg_1997standards. Retrieved from U.S. Census Bureau (2010). *The Native Hawaiian and Other Population: 2010*. Available at: <https://www.census.gov/prod/cen2010/briefs/c2010br-12.pdf>

group's, I hope to contribute by providing a more detailed account of Proposition 209's effects on student admission rates.

1.1 Effects of Proposition 209 on Traditional URMs:

Before studying Proposition 209's effects on the rates of admissions of Filipino and NHPI students, I will summarize the effects of Proposition 209 on traditional URMs. The definition URM as used by the UCOP and the UCs denotes three populations: The African American population, the Latinx population, and the American Indian population, as shown in the following definitions in a UCOP report and UCOP amicus brief. The UCOP Student Academic Services released a report in March 2003 defining URMs as "groups that collectively achieved eligibility for the University at a rate below 12.5%. These include African Americans, American Indians, and Chicano/Latinos."¹² This definition is again used in the Brief of the President and the Chancellors of the University of California as Amici Curiae in Support of Respondents, *Schuetz v. Coalition to Defend Affirmative Action, Integration and Immigration Rights and Fight for Equality by Any Means Necessary (BAMN)* (2014), as the amici introduced the drop in URM admissions and enrollment after Proposition 209: "The percentages of the UC student populations that comprise students from underrepresented-minority groups (defined by the University as African Americans, Latinos, and American Indians) dropped sharply in the aftermath of Proposition 209, and the University still has not recovered from this precipitous decline" (3). Additionally, the brief mentions how the percentages of Latinx students at the UC did not keep pace with the growth rate of the

¹² *Undergraduate Access to the University of California After the Elimination of Race-Conscious Policies*, Office of the President, 2003, http://ucop.edu/studentaffairs/files/aa_final2.pdf.

Latinx population in California, thereby highlighting the expectation that as a population grows so should its representation in the UCs (Brief of the President and the Chancellors of the University of California as Amici Curiae in Support of Respondents, *Schuette v. Coalition to Defend Affirmative Action et al.* 2014). In 2013, UC San Diego's Student Retention and Success Unit of the Vice Chancellor of Student Affairs added to the definition of underrepresented student populations to also include first-generation students, low-income students, students from nontraditional ages and backgrounds, and students whose characteristics were underrepresented in the university environment (Perna & Jones, 2013).¹³ The Office of Diversity and Outreach at UC San Francisco defined URM as someone whose racial or ethnic makeup was from one of the following groups: African American or Black, Filipino, Hmong, Vietnamese, Latinx or Hispanic, Native Hawaiian or other Pacific Islander, or two or more races when one or more are from the aforementioned list of races ("URM Definition," n.d., para. 1).¹⁴

Since UC San Diego Office of the Vice Chancellor of Student Affairs added to the UCOP definition to include categories outside of race, and UC San Francisco explicitly listed specific races, I contacted the Office of Admissions, the Equal Opportunity and Discrimination Prevention Office and the Diversity, Equity, and Academic Policy Office at UC Santa Barbara, to see if at UC Santa Barbara there were varying definitions for the URM term. In particular, I wanted to know the definition as practiced by offices that interacted with students at the outreach, admissions, and retention level. I contacted

¹³ UC San Diego Retention and Success accessed through <http://srs.ucsd.edu/support/underrepresented.html#Defining-the-Population>

¹⁴ "URM Definition," n.d., para.1. retrieved through <https://diversity.ucsf.edu/URM-definition>

Marcus Mathis the Assistant Director for Diversity Initiatives at UC Santa Barbara to see if there was a definition of URM specifically used at the outreach and admissions level at UC Santa Barbara. I was informed that when Proposition 209 was implemented in 1998, admissions officers at UC Santa Barbara could no longer see the ethnicities of students, as they used to before Proposition 209.¹⁵ He informed me that in both anticipation and response to the drop in the traditional URM populations after Proposition 209, the recruitment, outreach, admissions, and retention processes changed from race-conscious to race-neutral, encompassing categories such a low-income and first generation college students.¹⁶ He explained UC Santa Barbara's post-Proposition 209 focus on low-income and first-generation students over previous race-conscious recruitment and admissions was an attempt to incorporate the traditional URMs while complying with Proposition 209. This practice reflected a trend in the general policies employed by the entire UC system, as outlined by *Guidelines for Addressing Race and Gender Equity in Academic Programs in Compliance with Proposition 209* published in 2015 by the Office of the General Counsel.

After obtaining applicant, admissions and enrollment data from Laurel Wilder, Associate Director of Institutional Research, Planning and Assessment at UC Santa Barbara for years 1994-2017, at a preliminary glance, I saw the URM populations were negatively affected by the Proposition.¹⁷ I calculated the rates of students admitted using

¹⁵ Mathis, Marcus. Personal Interview. 23 March 2018.

¹⁶ Ibid.

¹⁷ Laurel Wilder, Associate Director of Institutional Research, Planning and Assessment at UC Santa Barbara, UC Santa Barbara. Email correspondence 12 Dec 2017.

the following equation for 1994 and 1999, the years used by Frances Contreras in a later study:

$$\left(\frac{\text{Total Number of Admitted Students of Specified Ethnicity}}{\text{Total Number of Admitted Students}} \right)$$

The Latinx rates of admissions out of the total admitted students decreased from 13.7% in 1994 to 12.5% in 1999; the African American rates decreased from 2.9% in 1994 to 2.4%; the American Indian rates decreased from 0.98% to 0.70%. As demonstrated later, this pattern of decrease was also evident at other UC campuses. Interestingly, unlike data for other campuses, the rates calculated from 1994 and 1999 for UC Santa Barbara showed even the aggregate AANHPI population saw a decrease during this period, going from 24.4% to 21.6%. When disaggregating the admitted Asian American group from the admitted Pacific Islander group, the Asian American group went from 24.02% in 1994 to 21.33% in 1999, while the Pacific Islander group went from 0.35% in 1994 to 0.31% in 1999. The only population with increased rates throughout the time period was that of the White student population, whose rates increased from 50.8% in 1994 to 51.3% in 1999. It should be pointed out that comparing 1994 and 1999 rates of admissions for the populations is just comparing rates in two points in time, rather than comparing them throughout the entire period. These rates act as comparisons of snapshots in time, but do not indicate that there was a statistically significant relationship with Proposition 209's implementation in 1998.

After the implementation of Proposition 209, not only did UC Santa Barbara reflect a drop in the URM population, but all other UC campuses also reflected similar patterns as emphasized by the Brief of the President and the Chancellors of the University of

California as Amici Curiae in Support of Respondents, *Fisher v. University of Texas at Austin* (2015). The Brief (2015) summarized the effect of the Proposition on racial diversity:¹⁸ “On every UC campus, the percentage of applicants who were underrepresented minorities declined, as did the admission rates for underrepresented minority students and the percentage of such students among the admitted class. These declines were especially pronounced at the most sought-after campuses and less severe at other campuses, which enrolled many underrepresented minorities who would previously have been admitted to the more selective campuses” (19-20).¹⁹

Frances E. Contreras (2005) in “The Reconstruction of Merit-Proposition 209”, outlined this effect Proposition 209 had on URMs by comparing their admission rates from 1994 and 1999 on three campuses: UCLA, a campus considered to be highly selective, UC Davis, a moderately selective campus, and UC Riverside, the least selective campus of the three studied. Both UCLA, and UC Davis showed decreases in URM rates of admission when comparing the rates between 1994 and 1999 (Contreras 2005, 378-380). Contreras calculated the rates of admissions using the aforementioned equation. She also used the term Asian American to include and aggregate Pacific Islander data. In contrast to the decrease in URMs, at UC Davis, the Asian American student population increased from 30.1% in 1994 to 32.7% in 1999, while White students comprised 43.9% in 1994 and 42.9% in 1999 (Contreras 2015, 379). At UCLA, a flagship university and one of the most selective UCs, URM rates decreased while Asian American rates of

¹⁸ Although Proposition 209 uses “race, color, ethnicity, and national origin” the by *Guidelines for Enhancing Diversity at UC in the Context of Proposition 209* (2016) uses the term “race” to collectively mean all four categories, which is why I solely use the term “race” in saying “racial diversity”.

¹⁹ Brief of the President and the Chancellors of the University of California as Amici Curiae in Support of Respondents, *Fisher v. University of Texas at Austin*, 570 U.S. (2015),

admission increased slightly from 41.2% to 41.3% and White students' rates increased from 32% in 1994 to 37% in 1999 (Contreras 2015, 380). Through descriptive statistics and logistic regression results, Contreras's study confirmed that eligibility to the moderately and highly selective campuses became increasingly competitive and more heavily reliant on high school GPA, in 1999 compared to 1994 (381). She pointed out that because GPA is a weighted average of points, those with access to these additional points from Advanced Placement (AP) and Honors courses would have an advantage over those without access (Contreras 379). Those without access to such courses and instruction were already at an inequitable disadvantage at the K-12 level (Contreras 2015, 386). In that same year, on July 29, 1999, the American Civil Liberties Union (ACLU) filed a civil rights class-action lawsuit in State Superior Court against the state of California for failing to provide equal access to AP courses, saying the lack of access in low-income districts violated the Equal Protection Clause and the Education Clause of the California Constitution.²⁰ The Equal Protection Clause declared, *inter alia*, that citizens of the United States could not be denied the equal protection of the laws by the state.²¹ The Education Clause of the California Constitution added in Article 9, Section 1, said that an education was crucial to preserve the rights of the people and that as such, the Legislature of California should promote by all suitable means such an instruction.²² Therefore, the effects of Proposition 209 demonstrated how structural inequity at a K-12 level played a role in perpetuating further inequity of opportunity in latter stages of a

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²⁰ "In Class-Action Lawsuit, ACLU Says CA Students Are Denied Equal Access to Advanced Placement Courses." American Civil Liberties Union, 29 July 1999, www.aclu.org/news/class-action-lawsuit-aclu-says-ca-students-are-denied-equal-access-advanced-placement-courses.

²¹ *U.S. Constitution*. Amendment XIV, Sec. 1.

²² California. Const. art. 9, §1.

student's life. This was the type of structural inequality that the UC Board of Regents in 2007 attempted to combat as they adopted the dual goal of diversity "as inclusive excellence" and "equal opportunity".²³ Following the logic behind race-neutral policies aimed to increase such said diversity and URM representation, through means of targeting low-income and first-generation students, I decided to research whether similarities between traditional URMs and the Filipino and NHPI populations existed. In so doing, I also hope to see whether or not Proposition 209 similarly affected both the two AANHPI groups and the traditional URMs.

1.2 Filipino and NHPI Populations and Justification of Case Study:

By studying the specific Filipino and NHPI populations, I hope to shed light on the existing heterogeneity within the AANHPI, especially in the context of higher education. In doing so, I discuss how the Model Minority Myth (MMM), along with data aggregation, underserves and even excludes populations in the AANHPI group. I began my thesis with a focus on the AANHPI population after reading this sentiment in *The Misrepresented Minority: New Insights on Asian Americans and Pacific Islanders, and the Implications for Higher Education*, edited by Maramba et al. (2013):

Yet, owing to the invisibility of AANHPIs in postsecondary education research and discourse (Museus & Kiang, 2009), they arguably remain the most misunderstood population in higher education (Chang, 2008). Thus, higher education researchers,

²³ *Guidelines for Addressing Race and Gender Equity in Academic Programs in Compliance with Proposition 209* (2015) <https://www.ucop.edu/general-counsel/files/guidelines-equity.pdf>

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Commented [AK3]: Do you tho?

policy makers, and practitioners are ill equipped to serve a rapidly growing segment of their student populations. (Maramba et al. 2013, 1)

The editors, Maramba et al. highlighted the harmful effects of the MMM and the absence of data to accurately understand the population (Maramba et al. 2013, 1). My search for application, admissions and enrollment data supported the latter point. I originally had started with UC San Diego as a primary case study and had chosen the Cambodian and Native Hawaiian populations to study for my thesis. I tried to expand my scope of available case studies by emailing each of the other eight undergraduate UC campuses in addition to the UCOP. In my request to their institutional research departments and admissions offices, I requested ethnically disaggregated applicants, admissions, and enrollment data for the years 1986-2017. I chose 1986 because I believed ten years before the Proposition's passage was a long enough period to establish any patterns for admission. Unfortunately, both Cambodian and Native Hawaiian populations' data were not collected at the UC level for years prior to 2009, after a student-led AANHPI data disaggregation campaign at UCLA called *Count Me In*.²⁴ The *Count Me In* campaign began with the goal of including UC data collection on Bangladeshi, Cambodian, Hmong, Indonesian, Laotian, Malaysian, Pakistani, Sri Lankan, Taiwanese, and Thai students; creating a separate Pacific Islander category in the admissions process; providing financial assistance for outreach programs for certain

²⁴ Teranishi, R., Lok, L., & Nguyen, B. (2013). ICount: A Data Quality Movement for Asian Americans and Pacific Islanders in Higher Education (pp. 1-43, Rep.). CA: National Commission on Asian American and Pacific Islander on Research in Education. Available at http://care.gseis.ucla.edu/wp-content/uploads/2015/08/2013_iCount_Report.pdf

AANHPI groups experiencing educational inequity (Dizon 2011, 25). Students at UC Irvine, UC San Diego, and UC Berkeley joined the campaign and in November 2007 held an “Out of the Margins” Conference, where Judy Sakaki, the then Vice President of Student Affairs at the UCOP, announced that 2009’s application would include 23 ethnicities for AANHPI and make a separate Pacific Islander category (Dizon 2011, 26). This disaggregated population data were not published until 2012 on the UCOP website because the UCOP collected the data for three years before publication.²⁵ In addition, UC Santa Barbara was the only campus to respond to my request with disaggregated data for the domestic AANHPI population for years prior to 1996, the year Proposition 209 passed.²⁶ The years for the data given began in 1992 and the available disaggregated AANHPI categories were Chinese, East Indian/Pakistani, Filipino, International, Japanese, Korean, Other Asian, Other/Unknown, Pacific Islander, and Vietnamese (added as a category in 1996). Although I emphasize the need for data disaggregation, since data was not collected specifically on the Native Hawaiian category I chose the aggregate Pacific Islander category to represent the NHPI. The struggle I faced in collecting my data support Maramba et al.’s point on the paucity of data available on the population, even in the fields of higher education.

In order to demonstrate the need for a detailed study on Filipino and NHPI populations, I outline their populations’ growth rate in California. In my thesis, I then hope to determine whether or not similar increases were reflected in the populations’

²⁵ Windi Sasaki, UC San Diego’s Asian Pacific Islander Middle Eastern Desi American Programs Program Manager, Personal Interview 14 Nov 2017.

²⁶ Laurel Wilder, Associate Director of Institutional Research, Planning and Assessment at UC Santa Barbara, UC Santa Barbara. Email correspondence 12 December 2017.

admission rates at the UC. According to the U.S. Census Bureau, between 2000 and 2010, the AANHPI group was the fastest-growing racial groups in California.²⁷ In comparison to the Asian American population growing at a 34% rate and the NHPI population growing at 31%, during the same decade, the Latinx population grew 29% while the White population decreased by 5%.²⁸ Although the U.S. Census brief compared the increase in the Asian American and NHPI population between 2000 and 2010, I use the 1990, 2000, 2010 decennial U.S. Census data for California to demonstrate the growth specifically for the Filipino and NHPI during the two decades. Between 1990-2000, the Filipino group grew 50.8%, and between 2000-2010, the group grew 33.7%, while the NHPI group grew 97.3% between 1990-2000 and 31.1% between 2000-2010.²⁹ According to *A Community of Contrasts*, a report released in 2013 by the Asian American Center for Advancing Justice, Filipino Americans are the largest Asian American group in California (10). The report also states that for the 2010, the rates for

²⁷ See both U.S. Census Bureau (2010). *The Asian Population: 2010*. Retrieved from <https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf>. And U.S. Census Bureau (2010). *The Native Hawaiian and Other Pacific Islander Population: 2010*. Retrieved from <https://www.census.gov/prod/cen2010/briefs/c2010br-12.pdf>.

²⁸ Fact attained by secondary source: *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in California*. 2013. Retrieved from <https://www.advancingjustice-la.org/community-contrasts-asian-americans-native-hawaiians-and-pacific-islanders-california>. See also U.S. Census Bureau (2010). *The Asian Population: 2010*. Retrieved from <https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf>.

²⁹ Detailed 1990 Data collected from "U.S. Census Bureau (1990) *Census Population: General Population Characteristics California*. Retrieved from <https://www2.census.gov/library/publications/decennial/1990/cp-1/cp-1-6-1.pdf>; Detailed 2000 Data collected from: U.S. Census Bureau (2000) *Profile of Selected Social Characteristics: 2000* (SF 4). Retrieved from https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_00_SF4_DP2&prodType=table. Detailed 2010 Data for all groups minus Filipino group from: U.S. Census Bureau (2010) *Race Alone or in Combination and Hispanic or Latino* (SF 1). Retrieved from: <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>. 2010 Filipino Data collected from The Filipino American Center of SFPL (2014) *2010 Census-Filipino Population in the United States, California, and San Francisco County*. Retrieved from: <http://filipinoamericancenter.blogspot.com/2014/01/filipino-population-in-united-states.html>

GED and high school diploma attainment for AANHPI adults 25 or older were 86%, while the African American rates were 87%, and the White population rates were 93%. In the context of the UC system, according to the same report, the NHPI, Laotian, Filipino, Cambodian, Pakistani, Indonesian, and Bangladeshi Americans had below-average enrollments into the UC system (*A Community of Contrasts* 2013, 18). In the fall of 2011, while the rates for total Freshman for the UC-system was 72%, the African American admission rates was 53%, the NHPI population's was 62%, the Filipino group's was 69% (*A Community of Contrasts* 2013, 19). For UC Berkeley, the data revealed two trends: of the AANHPI, Indian, Bangladeshi, Chinese, Korean, Malaysian, and Pakistani students had disproportionately higher representation among AANHPI applicants relative to their representation in the state (*A Community of Contrasts* 2013, 19). In contrast, Cambodian, Fijian, Filipino, Guamanian/Chamorro, Native Hawaiians, Hmong, Indonesian, Japanese, and Laotian had disproportionately lower representation among AANHPI applicants relative to their representation in the state (*A Community of Contrasts* 2013, 19). Given the substantial population growth of the Filipino and NHPI groups in California, and the preliminary research on their presence in higher education in California, I decided to study whether or not their UC admission rates proportionally represented their population's increase during the time period.

1.3 Research Summary and Introduction of Hypotheses:

In this thesis, I answer the question: Did Proposition 209's implementation in Fall 1998 at UC Santa Barbara affect Filipinos and Pacific Islanders more than other groups? Specifically, did Proposition 209 have a bigger effect for the Filipino and NHPI groups' rates of admissions versus the White group's during the years 1994-2017? I argue the

Filipino and NHPI population admission rates, relative to the White control population's, were negatively affected after the implementation of Proposition 209. I use the White population as the control population based on preliminary research, and the UCOP Amicus Curiae Briefs' (2013 and 2014) and Contreras's (2005) arguments that the counterparts to the traditional URM populations in the UC are the White and Asian American students. In addition, I use the White population because I believe the absence of detailed research on the AANHPI populations is largely in part due to the MMM, which was used to support the existing historical and systemic White hegemony. Given the U.S. Census Bureau data and preliminary research on Filipinos and NHPI in California and UC system, I conclude with the following hypotheses:

Hypothesis 1:

H1: Relative to the rate of White students admitted from years 1994-2017, I posit the Filipino population will demonstrate a significantly disproportionate effect on their rate of admissions after the implementation of Proposition 209.

Hypothesis 2:

H2: I theorize a similar pattern to be seen in the rates of admissions for the NHPI population. Relative to the rates of White students admitted from years 1994-2017, I posit the NHPI population will demonstrate a significantly disproportionate effect on their rate of admissions after the implementation of Proposition 209.

To test my hypotheses, I collected the domestic applicant, admissions and enrollment data for the AANHPI group from the UC Santa Barbara Institutional Research Department starting in 1992 and the data for the other population groups from the UCOP Freshman fall admissions summary starting in 1994.³⁰ The available AANHPI categories are Chinese, East Indian/Pakistani, Filipino, Japanese, Korean, Other Asian, and Pacific Islander. It is assumed here that the Native Hawaiian population is included in the Pacific Islander category. I realize the students in my data are domestic students, not California resident students, and that the UC only has the burden to represent its in-state residents, but this was the data I could access. In addition, based on the Freshman fall admissions summary on the UCOP website for years 1994-2017,³¹ although there is a general pattern of increase in the numbers of non-California domestic students and international students in the late 2000s-2010s, the majority of admitted students remain California Residents. Therefore, I use the numbers of domestic students admitted as a proxy for the number of resident students admitted. In my research design, the dependent variable, is the yearly, group-specific rates of admissions into UC Santa Barbara over the time span of 1994-2017. I use the year 1994 for my study because this was the year data for the non-AANHPI domestic students' rates of admissions were published on the UCOP website. Although the dependent variable is the group-specific rates, for my hypotheses and thesis, I focus on the Filipino and NHPI populations. One independent variable is the implementation of Proposition 209. Another independent variable is the ethnicity of the group. Because I use the White population as a control group from which all the other

³⁰ Available at <https://www.universityofcalifornia.edu/infocenter/freshman-admissions-summary>

³¹ Available at <https://www.universityofcalifornia.edu/infocenter/freshman-admissions-summary>

group's rates are compared to, this is a difference in difference study. This means I study the changes in rates for other populations, relative to the changes in rates for the White population. This design is further explained in my research design.

Findings

After running a regression on the data, I found that relative to the White population's rates of admissions, the Filipino rates of admissions significantly negatively changed after the implementation of Proposition 209. Therefore, my first hypothesis that the Filipino group was significantly affected after 1998's implementation of Proposition was true. In contrast, I found that the NHPI population's rates of admissions, relative to the White population's, was not significantly affected after the implementation of Proposition 209.

1.4 Thesis Outline

The structure of the thesis is outlined as such: Chapter Two provides a literature review on the current research and literature on the topic of Proposition 209's effects on URM's. Chapter Three provides the necessary historical parameters around Proposition 209, the debate over race and diversity in higher education, and the relevant judicial cases surrounding these topics. Chapter Four summarizes the UC efforts in race-neutral policies and the difficulties in maintaining diversity through such measures. Chapter Five outlines the research design in detail, restating the hypotheses, operationalizing the independent and dependent variables, and presenting the corresponding graphs and regression model. Chapter Six presents the results and analyses from the regressions. Lastly, Chapter Seven summarizes the findings and implications for AANHPI in higher education.

Chapter 2: Literature Review

Due to lack of research on the effect of Proposition 209 on the specific subgroups within the AANHPI, many of the scholarly articles that discuss the Asian student population, assume the entire category is succeeding academically. In the context of Proposition 209, studies such as the UCOP Amicus Briefs and Contreras' article, demonstrated how the rates of traditional URM applicants, admissions, and enrollments decreased after the implementation of Proposition 209. Card and Krueger (2005) also demonstrated the drop in URM representation, emphasizing that at the three most selective campuses of UCLA, UC Berkeley, and UC San Diego, admissions went from 45%-55% in 1995 to 1997 to 20%-25% in 1998 to 2001 (421). According to Card and Krueger (2005), during that period, the trend for Asian American and White population's admission rates at the three selective campuses saw no significant decrease, while the traditional URM rates declined (421). As I attempted to look more into detail into the AANHPI population's changes in admissions rates during that time, I found there was a substantial body of research done on Proposition 209's effects on traditional URM, but little on the AANHPI.³² Some scholars, like OiYan Poon³³ and Karthick Ramakrishnan³⁴ shed light on the need for more in-depth disaggregated data, arguing that the aggregate Asian American or Pacific Islander categories and statistics misrepresented the actual

³² Santos, Jose L, et al. "Is 'Race-Neutral' Really Race-Neutral? Disparate Impact Towards Underrepresented Minorities in Post-209 UC System Admissions"

³³ One of the authors of "Count Me In!: Ethnic Data Disaggregation Advocacy, Racial Mattering, and Lessons for Racial Justice Coalitions" and of "A Critical Review of the Model Minority Myth in Selected Literature on Asian Americans and Pacific Islanders in Higher Education."

³⁴ Author of AAPI Reports from Center for American Progress, UC Riverside Professor, UC AAPI MRP Director, AAPIData.com Founder and Director.

realities of these populations. Ramakrishnan, in his “State of Asian Americans and Pacific Islander” Report Series, demonstrates how specific groups within the AANHPI varied in their levels of educational attainment. In 2014, 49% of the aggregate Asian American population in the United States had bachelor’s degrees, compared to 30% of the White population, 19% of the NHPI population, 29% of the Filipino population, and 19% of the African American population (Ramakrishnan 2014, 2-3). Although this was national data and not California data, it demonstrates how aggregating data masks the crucial variances within a population. For example, according to Ramakrishnan, Southeast Asians such as Cambodian, Hmong, and Laotian tend to have lower levels of education than the average American (Ramakrishnan 2014, 4). Yet they are categorized under the same umbrella of “Asian Americans” with Asian Indians and Chinese Americans, whose rates of bachelor and graduate degree attainment surpasses even the White population’s (Ramakrishnan 2014, 3-4). In addition, before the year 2000, even at the national level of the U.S. Census Bureau, the term Asian American encompassed the Pacific Islander Native Hawaiian population and a distinction between the two was not made until the 2000 U.S. decennial Census.³⁵ Therefore, in my search for data on the effects of Proposition 209 on different populations’ admissions, I found the AANHPI population was normally discussed as a monolithic population. This practice led to assumptions that race-neutral policies, such as Proposition 209, positively affected or did not hurt the AANHPI population’s admissions.³⁶ When focusing on the effects of

³⁵U.S. Census Bureau (2000). *The Asian Population: 2000*. Retrieved from <https://www.census.gov/prod/2002pubs/c2kbr01-16.pdf>

³⁶ Chea, Terrance “Campus Diversity suffers under race-blind policies.” Santos, Jose L, et al. “Is ‘Race-Neutral’ Really Race-Neutral? Disparate Impact Towards Underrepresented Minorities in Post-209 UC

Proposition 209, the research by Santos et al. shows that the number of applicants, admitted students, and enrolled URM students dropped noticeably after the Proposition's implementation. According to Santos et al., contrary to the race-neutral intent of the Proposition, in practice, URMs, especially at the flagship UCs such as the UCLA and UC Berkeley, were disproportionately affected.

Disparate Impact of Proposition 209 on Traditional URMs

In "Is 'Race-Neutral' Really Race Neutral?: Disparate Impact Towards Underrepresented Minorities in Post-209 UC System Admissions", the authors examine the effects of the Proposition by looking at the rate of URM applicants, admissions, and enrollments from 1995 to 1998 to 2002, before and after the Proposition was implemented (Santos et al. 2010, 605). Although the authors do not explicitly define URM, one can take away from this specific study that URMs meant the African American, Latinx, and Chicax students—the traditional URMs excluding the Native American group (Santos et al. 2010, 606). According to the results of their study, after the Proposition was implemented, there was a disproportionate drop in the applications, admissions, and enrollments rates of these URM students, further decreasing their proportional representation at UC schools (Santos, Jose et al. 2010, 606). In addition, they argued that such a decrease made the URM representation, especially that of the Latinx population, increasingly disproportionate to their population size in the state (Santos, Jose et al. 2010, 606). For example, from the years 1995 to 1998, the percent of African American students enrolled in UC Berkeley went from 6.67% to 3.67%, the

System Admissions." Card, David, and Alan Krueger. "Would the Elimination of Affirmative Action Affect Highly Qualified Minority Applicants? Evidence from California and Texas."

percent of Chicana students enrolled went from 13.22% to 5.70% and the percent of Latina students went from 3.72% to 2.28% (Santos, Jose et al. 2010, 620). The Latina population in 2010 had grown to be the second largest racial group behind the White population³⁷ and continued to grow to become the largest racial group in California by 2015.³⁸ This growth in population was emphasized to explain how in 2002, the Chicana and Latina populations faced a rebound in representation (Santos et al. 2010, 606). They explain that with the rapid growth in population, there also was a corresponding increase in UC eligibility for the Latina and Chicana groups, which resulted in higher numbers being admitted. Despite the slight increase in proportional representation for the Latina and Chicana population in 2002, the authors argue the Proposition still negatively impacted the traditional URM groups, while it disproportionately increased the AANHPI and White population's representation (Santos et al. 2010, 621). To be exact, the authors' research demonstrates the "disparate impact towards URM groups at multiple levels from taking an application to enrollment during the following years: 1995, 1998, and 2002" (Santos et al. 610). According to *Griggs v. Duke Power Co.* (1970), disparate impact theory means a policy has a facially-neutral definition or requirement, but the outcome demonstrates a discriminatory impact.³⁹ In the context of the Proposition, although the intent and language of the Proposition was racially-neutral and "color-blind" as later explained in *Lungren v. Superior Court of Sacramento* (1996), once implemented, the outcomes showed these URM groups were disproportionately affected.

³⁷ Walters, Dan (2015) "California will see slow population growth, big Latino gains." *The Sacramento Bee*. <http://www.sacbee.com/news/politics-government/capitol-alert/article13521122.html>

³⁸ "California's Population." Public Policy Institute of California. Public Policy Institute of California, n.d. Web.<<http://www.ppic.org/publication/californias-population/>>.

³⁹ "*Griggs v. Duke Power Co.* (1970)." *Oyez*, <https://www.oyez.org/cases/1970/124>

While the article is valuable and effectively demonstrates the disparate impact of the Proposition on traditional URMs, it was written in 2010, when the fastest growing population group was the Latinx population; currently, the fastest growing immigrant population is now the AANHPI group.⁴⁰ Between the years 2000 and 2015, the Asian population grew 72% while the Latinx population increased by 60%.⁴¹ As mentioned in the earlier chapter, between 2000-2010, the Asian American population in California grew at a 34% rate, the NHPI population grew at 31%, while the Latinx population grew 29% and the White population decreased by 5%.⁴² This rate of growth is significant because in the education sector, the number of AANHPI students enrolling in universities is projected to go up to 1.4 million students by 2020, which is two times the number of AANHPI students that were enrolled in 1995.⁴³ Following the Latinx population growth and its corresponding rebound in UC representation, one could be tempted to say the increase of the AANHPI population in the state (and thus an increase in university-eligible AANHPI) might justify their increase in university admissions. Although the logic is not entirely wrong, it is important to note the large number of subgroups within the AANHPI group. As demonstrated by UC Berkeley's example with overrepresentation

⁴⁰ See both U.S. Census Bureau (2010). *The Asian Population: 2010*. Retrieved from <https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf>. And U.S. Census Bureau (2010). *The Native Hawaiian and Other Pacific Islander Population: 2010*. Retrieved from <https://www.census.gov/prod/cen2010/briefs/c2010br-12.pdf>.

⁴¹ Lopez et. Al. "Key Fact About Asian Americans, a Diverse and Growing Population."

⁴² Fact attained by secondary source: *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in California*. 2013. Retrieved from <https://www.advancingjustice-la.org/community-contrasts-asian-americans-native-hawaiians-and-pacific-islanders-california>. See also U.S. Census Bureau (2010). *The Asian Population: 2010*. Retrieved from <https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf>.

⁴³ Karthick Ramakrishnan and Farah Z. Ahmad <https://cdn.americanprogress.org/wp-content/uploads/2014/04/A-API-Education.pdf>

of some Asian groups and underrepresentation of others,⁴⁴ some subgroups' admissions could indeed have grown in proportion to their growth in the state, while others could have decreased, relative to their population growth in the state. In addition, while the article does effectively demonstrate the significant negative impact of 209 on traditional URMs (minus the American Indian category whom the authors do not include), when mentioning the Asian American population, the authors refer to them as a group whose numbers increased during the time period (Santos et al. 2010, 606). Santos et al. fail to mention the NHPI group at all, and one could assume this group's data is aggregated into the Asian category. Therefore, with my thesis, I hope to contribute to the existing research by providing a more specific perspective on the effects Proposition 209 had on the admissions of Filipinos and NHPI at UC Santa Barbara during 1994-2017.

⁴⁴p. 19 in *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in California*. 2013. Retrieved from <https://www.advancingjustice-la.org/community-contrasts-asian-americans-native-hawaiians-and-pacific-islanders-california>.

Chapter 3: Historical Background of Proposition 209

In order to fully understand the context and implications of Proposition 209, it is vital to understand the surrounding parameters of the debate, which I further discuss in detail in this chapter. Much of the preceding and following debates on Proposition 209 refer to the authority of the Equal Protection Clause in the 14th Amendment of the United States Constitution, ratified in 1868.⁴⁵ In the same year, the UC system was founded under the Organic Act of 1868, which established through Section 14, that “it shall be the duty of the Regents, according to population, to apportion the representation of students, when necessary, that all portions of the State shall enjoy equal privilege therein.”⁴⁶ This sentiment was repeated in the UC Policy on Undergraduate Admissions (2012) which states in part that: “Mindful of its mission as a public institution, the University of California...seeks to enroll, on each of its campuses, a student body that, beyond meeting the University's eligibility requirements, demonstrates high academic achievement or exceptional personal talent, and that encompasses the broad diversity of cultural, racial, geographic, and socio-economic backgrounds characteristic of California”(1).⁴⁷ Therefore, the state of California, through its public education system, has a mission to proportionately represent the state’s population in its student populations.

3.1 Lead Up to Affirmative Action: Executive Order 10925, The Civil Rights Act of 1964, and Executive Order 11246

⁴⁵ *U.S. Constitution*. Amendment XIV, Sec. 1.

⁴⁶ Organic Act of 1868, 244 Statutes of California §§ 1-26 (1867-1868)

⁴⁷ *Guidelines for Implementation of University Policy on Undergraduate Admissions* (2012) accessed through https://www.ucop.edu/student-affairs/files/GUIDELINES_FOR_IMPLEMENTATION_OF_UNIVERSITY_POLICY_on_UG_ADM_Revised_July2012.pdf

Nearly a century after the UC system's establishment, on March 6, 1961, President John F. Kennedy signed Executive Order 10925 establishing the Equal Employment Opportunity Committee, on which Vice President Lyndon B Johnson was chairman, and providing affirmative action provisions for government contractors and subcontractors.⁴⁸ Executive Order 10925 ordered government contractors and subcontractors to take affirmative action to employ qualified applicants regardless of their race, creed, color or national origin, and upon employment, to treat them all equally regardless of these qualities, demonstrating the government's commitment to true equal opportunity.⁴⁹

Kennedy passed his executive order in response to racial tensions and active discrimination against African Americans in particular.⁵⁰ Five days after Kennedy's assassination, on November 27, 1963, Lyndon B Johnson, the late president's successor, addressed Congress and urged them to proceed with Kennedy's legislative agenda for a civil rights bill.⁵¹ Thus was born the 1964 Civil Rights Act, addressing the equal right to vote in Title I and "injunctive relief against discrimination in places of public accommodation" regardless of "race, color, religion, or national origin" through Title II.⁵² Title III and Title IV addressed the desegregation of public facilities and desegregation of public education, respectively.⁵³ Section 401 of Title IV clarified that desegregation means "the assignment of students in public school and within such

⁴⁸ "A Brief History of Affirmative Action" http://www.oeod.uci.edu/policies/aa_history.php

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Civil Rights Act of 1964. Accessed through https://www.eeoc.gov/eeoc/history/35th/thelaw/civil_rights_act.html

⁵³ Ibid.

schools without regard to their race, color, religion, or national origin, but desegregation shall not mean the assignment of students to public schools in order to overcome racial imbalance.”⁵⁴ Title V established the Commission on Civil Rights responsible for investigating allegations of discrimination and reporting back to the federal government.⁵⁵ Title VI addressed nondiscrimination of federally assisted programs, wherein section 601 stated no person on account of his race, color, or national origin could be discriminated against in any program receiving federal financial aid.⁵⁶ Title VII, otherwise known as the Equal Employment Opportunity, amongst other provisions, listed the duties of the the Equal Employment Opportunity Commission and stated that discrimination in employment practices based on a person’s race, color, religion, sex, or national origin, is illegal.⁵⁷ The last three Titles, Title VIII, IX, and X respectively addressed registration and voting, intervention and the procedure after removal in civil rights cases, and the establishment of a community relations service.⁵⁸ Despite this step for civil rights, after experiencing how race-neutral policies did not enforce the equal rights listed in the 1964 Civil Rights Act, activists urged Johnson to act further.⁵⁹ On September 24, 1965 he issued Executive Order 11246, superseding Kennedy’s Executive Order 10925, and the order was also known as the Equal Employment Opportunity Order.⁶⁰ In regards to the issue of employment, the Executive Order stated “The

⁵⁴ Civil Rights Act of 1964. Accessed through https://www.eeoc.gov/eeoc/history/35th/thelaw/civil_rights_act.html

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ History of Affirmative Action” <https://civilrights.uslegal.com/affirmative-action/history-of-affirmative-action/>

⁶⁰ Exec. Order No. 11246, 3 C.F.R. 684 (1965). <https://www.dol.gov/ofccp/regs/statutes/eo11246.htm>

contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.”⁶¹ In 1969, when Nixon’s administration came into power, they continued Johnson’s plan to increase target levels of minority employees, thus, with the efforts of many, was the advent of affirmative action in practice.⁶²

3.2 Regents of University of California v. Bakke, 438 U.S. 265 (1978):

After the Civil Rights Act, public employers and universities like the UC used affirmative action to employ and enroll students of color. Shortly after the practice of affirmative action was implemented, Allan P. Bakke, a white male, was rejected from the UC Davis Medical School both times he applied in 1973 and 1974, and decided to challenge the way UC Davis practiced its affirmative action program.⁶³ UC Davis Medical School selected its 100 entering students through two programs: the general admissions process and the special admissions program, each of which had its respective admissions committees.⁶⁴ For the general admissions program, applicants needed an undergraduate grade point average of 2.5 or higher to be further considered in the admissions process; then about one out of six applicants would be called back for an interview.⁶⁵ Based on a combination of this interview, the applicant’s grade point average, science-based classes’ grade point average, Medical College Admissions Test

⁶¹ Exec. Order No. 11246, 3 C.F.R. 684 (1965). <https://www.dol.gov/ofccp/regs/statutes/eo11246.htm>.

⁶² Ibid.

⁶³ Summary Section in *Regents of University of California v. Bakke*, 438 U.S. 265 (1978) Cornell University Law School, n.d. Web. 30 March 2018.

https://www.law.cornell.edu/supremecourt/text/438/265#writingUSSC_CR_0438_0265_ZO

⁶⁴ Ibid.

⁶⁵ Ibid.

(MCAT) scores, letters of recommendation, extracurricular activities, and other biographical data, committee members for the regular admissions would create a “benchmark score” and compare the score to other applicants in the general admissions pool.⁶⁶ The application forms for the special admissions group asked if the applicants considered themselves “economically and/or educationally disadvantaged” and if they were from a “minority group” herein defined as African American, Chicanos, Asians, or American Indians.⁶⁷ Those in the special admissions program were chosen by a separate committee from the general admissions committee, a committee whose majority consisted of aforementioned minority groups.⁶⁸ If an applicant qualified for both of the “minority” and “disadvantaged” categories, though his application would forego a similar process as that of a general admission applicant, the special admissions applicant would not need the 2.5 grade point average to be considered for an interview.⁶⁹ In addition, in the beginning stages, this pool of applicants would be considered separately from the general applicant populations, and about one out of five of these special applicants were called for an interview.⁷⁰ After the interview process, the applicant would also receive benchmark scores and those with the highest scores would be recommended to the general admissions committee who could reject or accept the applicants based on inability to meet course requirements or other failures (*Regents v. Bakke* 1978, 266). This special admissions committee would recommend students to fill up the available 16 spots

⁶⁶ Summary Section in *Regents of University of California v. Bakke*, 438 U.S. 265 (1978) Cornell University Law School, n.d. Web. 30 March 2018.

https://www.law.cornell.edu/supremecourt/text/438/265#writingUSSC_CR_0438_0265_ZO

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

designated for these special students. This particular practice of reserving 16 spots for disadvantaged minority students was a key provision the respondent, Allan P. Bakke, challenged.

The first year Bakke applied in 1973, he was rejected because his MCAT score of 468 out of 500 did not meet the cutoff score of 470 for general applicants that year, despite four spots still being vacant for the special admissions program.⁷¹ By the second time he applied, despite his score of 549 of 600, he was rejected and for both years was not considered to be on the waitlist.⁷² Bakke filed an action in the state court alleging the special admissions program violated the Equal Protection Clause of the Fourteenth Amendment, the California Constitution, and Title VI of the 1964 Civil Rights Act.⁷³ He argued UC Davis violated section 601 in Title VI stating that no person on the grounds of race, color, or national origin could be discriminated against from participating in programs that receive federal financial aid.⁷⁴ The trial court declared the special admissions program was a racial quota, since the minority disadvantaged students were only being considered against one another in the initial process of admissions.⁷⁵ The trial court also declared the university could not take into account race because in doing so with this special admissions program, it had violated Federal Law, State Constitutions, and Title VI.⁷⁶ The California Supreme Court used the strict scrutiny standard, a form of

⁷¹ Summary Section in *Regents of University of California v. Bakke*, 438 U.S. 265 (1978) Cornell University Law School, n.d. Web. 30 March 2018.

https://www.law.cornell.edu/supremecourt/text/438/265#writingUSSC_CR_0438_0265_ZO.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

judicial review allowing the Court to decide whether or not certain laws are constitutional; in order to be constitutional, the statute being challenged must prove a compelling governmental interest and a narrowly tailored nature to achieve this interest.⁷⁷ Narrowly tailored in this context meant race was only one of the categories being considered for admissions and used only when necessary for the goal of diversity.⁷⁸ The court applies strict scrutiny when dealing with cases with suspect categories, also known as race, national origin, religion, alienage and poverty.⁷⁹ Therefore, using the strict scrutiny standard, the California Supreme Court held the opinion that the special admissions committee violated the Equal Protection Clause, the California Constitution, and Title VI of the 1964 Civil Rights Act but reversed the lower court's decision insofar as it outlawed the Regents' consideration of race as a factor for admissions.⁸⁰

Supreme Court Justice Powell, who delivered the opinion also affirmed the use of strict scrutiny in the case and said since the Regents could not prove that Bakke would not have been accepted even without the special admissions program, compelled the Regents to admit him (*Regents v. Bakke* 1978, 320). Justices Burger, Stewart, Rehnquist and Stevens joined him in that decision.⁸¹ Justice Powell also delivered a critical opinion: The goal of creating a diverse student body was a compelling government interest under some circumstances, but quotas based on race, national origin, or color as a means to

⁷⁷ Strasser, Ryan. "Strict Scrutiny." *LII/Legal Information Institute*. Cornell University

⁷⁸ Patricia Gurin, Eric Dey, Sylvia Hurtado, and Gerald Gurin (2002) "Diversity and Higher Education: Theory and Impact on Educational Outcomes."

⁷⁹ *Ibid.*.

⁸⁰ *Regents of University of California v. Bakke*, 438 U.S. 265 (1978), Cornell University Law School, n.d. Web. 30 March 2018. https://www.law.cornell.edu/supremecourt/text/438/265#writing-USSC_CR_0438_0265_ZO

⁸¹ *Regents of University of California v. Bakke*, 438 U.S. 265 (1978) Cornell University Law School, n.d. Web. 30 March 2018. https://www.law.cornell.edu/supremecourt/text/438/265#writing-USSC_CR_0438_0265_ZO

increase this diversity were unconstitutional (*Regents v. Bakke* 1978, 287-320). His opinion on constitutionally permissible race-conscious policies became foundational in future race-conscious admission policies, as seen in *Gratz* (2000) and *Grutter* (2002). Justice Powell also clarified what equal protection in the context of race-conscious educational policy meant. He stated that “[t]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accord the same protection, then it is not equal (*Regents v. Bakke* 289). *Regents of University of California v. Bakke* (1978) set the precedent that consideration of race, national origin, or color in the admissions process as a whole for public universities was constitutional. The latter part was joined by Justices Brennan, White, Marshall, and Blackmun.⁸² In addition, Justice Brennan, representing his joint opinion with Justices White, Marshall, and Blackmun, wrote the “Government may take race into account when it acts not to demean or insult any racial group, but to remedy disadvantages cast on minorities by past racial prejudice” (qtd. in Jeffries 492).⁸³

3.3 Special Policy 1 (SP-1) and Special Policy 2 (SP-2) and the Proponents of Race-Neutrality:

Despite the practice of considering race in the public university system, on July 20, 1995, the Board of Regents of the University of California approved two policies SP-1 and SP-2 in spite of the opposition from all nine chancellors, the UC President, UC

⁸² Ibid. 320

⁸³ *Regents of University of California v. Bakke*, 438 U.S. 265 (1978) as quoted on p.492 in *Justice Lewis F. Powell, Jr.*, a secondary source, because original Supreme Court Bound Volumes were only available online for years after 1987

Vice Presidents, UC faculty, the Academic Senate, and UC students.⁸⁴ SP-1 and SP-2 had passed with the intent of being effective January 1, 1997. Section 3 in SP-1 explicitly stated that “race, religion, sex, color, ethnicity, or national origin shall not be a criterion for admissions in exception to UC eligibility requirements.”⁸⁵ Section 2 of SP-2, intended to be effective January 1, 1996, stated the UC could not use “race, religion, sex, color, ethnicity, or national origin as a criterion in its employment and contracting practices.”⁸⁶ A key distinction from the two UC Regents’ Resolution and Proposition 209 was that SP-1 and SP-2 banned the consideration of race in admissions and employment practices, where as Proposition 209 banned preferential treatment to anyone based on “race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”⁸⁷ Despite the aforementioned opposition, with the combined leadership efforts of Regent Ward Connerly and Governor Pete Wilson and the charged political atmosphere at the time over affirmative action, the Resolutions passed.⁸⁸ An important factor to note about the Resolutions is that it was a policy generated and approved by the Regents, yet the way the UC system had previously operated was through a shared governance between the Regents, the Academic Senate, and the Office of the President.⁸⁹ Previous to the Resolutions, policy changes were first initiated by the Academic Senate and the Office of the President, but the Resolutions

⁸⁴ Douglass, John A. “A Brief of the Events Leading to SP1.” See also Wallace, Amy, and Bettina Boxall, “Chancellors Say Prop. 209 Would Hurt Education.”

⁸⁵ Text of UC Regents’ Resolutions.” <https://www.berkeley.edu/news/berkeleyan/1995/0830/text.html>

⁸⁶ Ibid.

⁸⁷ California. Const. art. I, §31.

⁸⁸ Douglass, John A. “A Brief of the Events Leading to SP1.”

⁸⁹ Ibid.

were a policy initiated by the Regents that the former two opposed.⁹⁰ There are 26 members in the Board of Regents, 18 of whom are appointed by the governor, one Regent-appointed student Regent, and seven ex-officio members; of the 18 appointed Regents, 17 were appointed by Republican governors, and five were by Governor Pete Wilson himself.⁹¹

Governor Pete Wilson, who was President of the Board of Regents in 1995 and known opponent of affirmative action policy, was also running for the Presidency in the 1996 Republican primaries.⁹² A crucial part of Wilson's campaign was to roll back affirmative action, or what he called "reverse discrimination" in a Republican convention in Sacramento.⁹³ Therefore, as an opponent of affirmative action, the Governor, and the President of the Board of Regents, he and Ward Connerly, an African American Businessman appointed as a Regent by Wilson, worked together to pass SP-1 and SP-2 and deliver on their political beliefs.⁹⁴ Ward Connerly, like Pete Wilson, opposed affirmative action for minorities and women, firmly believing an applicant for admissions into the UC or for employment for the UC should solely be accepted based on merit and academic achievement.⁹⁵ Both Connerly and Wilson were also crucial in the passage of Proposition 209, also known as the California Civil Rights Initiative, arguing that merit should be emphasized in university admissions.⁹⁶ Proponents of Proposition 209, as

⁹⁰ Ibid.

⁹¹ Douglass, John A. "A Brief of the Events Leading to SP1."

⁹² Ayres, Drummond Jr., "On Affirmative Action, Wilson's Moderate Path Veered Quickly to Right."

⁹³ As quoted in *The New York Times* "On Affirmative Action, Wilson's Moderate Path Veered Quickly to Right."

⁹⁴ Douglass, John A. "A Brief of the Events Leading to SP1."

⁹⁵ Ibid.

⁹⁶ Stall, Bill, and Dan Morain. "Prop. 209 Wins, Bars Affirmative Action." *Los Angeles Times*, 6 Nov. 1996, [articles.latimes.com/1996-11-06/news/mn-62738_1_affirmative-action](https://www.latimes.com/1996-11-06/news/mn-62738_1_affirmative-action).

demonstrated in *Lungren v. Superior Court of Sacramento* (1996), argued that the terminology used was preferential treatment, that race-based outreach and retention programs that did not discriminate or show preference could continue unchanged.⁹⁷ As mentioned by Poon et al., (2016) emphasizing the idea of merit over race-conscious ideologies was a tool used to push a race-neutral political and educational agenda (474). Yet again pointed out by Poon et al. (2017), this focus on merit, also actively present in the MMM, fails to acknowledge past injustices and structural racism against minorities (96).

Once the proposal for the Resolutions was presented to the Office of the President and the Academic Senate, the Regents requested the two offices turn in a comprehensive review of current affirmative action policies and possible alternative policy options.⁹⁸ Yet because the analysis provided by the Provost and Assistant Vice President of Student Academic Services at the time, albeit showing how the future demographics of the UC could drastically change after repealing affirmative action, did not present on alternative policies and analyses.⁹⁹ Therefore, the Regents viewed the report as a one-sided, biased defense of affirmative action and questioned the credibility and objectivity of the Office of the President's administration.¹⁰⁰ Despite the Academic Senate also having the ability to respond to the Regents, they deferred to the Office of the President to take lead on the review.¹⁰¹ The Academic Senate could have used their Board of Admissions and Relations with Schools (BOARS), which oversees undergraduate admissions or their

⁹⁷ "The Constitutionality of Proposition 209 as Applied." *Harvard Law Review*

⁹⁸ Douglass, John A. "A Brief of the Events Leading to SP1."

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

Task Force with the authority to review current affirmative action policies.¹⁰² But when the Academic Council of the Senate requested BOARS, the Coordinating Committee on Graduate Affairs, and the Committee on Academic Personnel for assistance in collecting thorough information on affirmative action policies, none replied with the Board of Regent's requested detailed review of affirmative action policies.¹⁰³ On July 20th, 1995, SP-1, the Resolution dealing with student admissions, passed with a 14-10 vote, with one Regent refraining, and SP 2, dealing with hiring and subcontracting, passed with a 15-10 vote. Although the effective dates for SP 1 was January 1, 1997 and the effective date for SP-2 was January 1, 1996, Proposition 209's passage in November 5, 1996 superseded the implications of SP 1 and SP 2.¹⁰⁴

3.4 Lungren v. Superior Court of Sacramento; Bill Jones, as Secretary of State, et al., Real Parties of Interest. 48 Cal. App. 4th 435 (1996):

Shortly before Proposition 209 passed in November, Daniel E. Lungren the Attorney General at the time, challenged the Sacramento Superior Court's judgment entered on August 2nd, 1996, in the Court of Appeals of California.¹⁰⁵ The petitioner, Attorney General Daniel E. Lungren sought peremptory writ of mandate from the Court of Appeals, to direct the Superior Court of Sacramento to vacate part of the judgment it made on August 2, 1996. *Nolo's Plain-English Law Dictionary* defines peremptory writ of mandate as an order requiring the subjected governmental body, governmental official,

¹⁰² Ibid.

¹⁰³ Douglass, John A. "A Brief of the Events Leading to SP1."

¹⁰⁴ Ibid.

¹⁰⁵ *Lungren v. Superior Court of Sacramento*, 48 Cal. App. 4th 435 (1996). Retrieved from <https://www.legale.com/decision/199648348calapp4th4351475>

or lower court to a certain action the court found to be its duty by law.¹⁰⁶ Through peremptory writ of mandate, Lungren requested the Court of Appeals legally void the Superior Court’s previous mandate ordering him to change the ballot title and label for Proposition 209.¹⁰⁷ The ballot title and summary for Proposition 209 had been: “Prohibition Against Discrimination or Preferential Treatment by State and Other Public Entities. Initiative Constitutional Amendment: Prohibits the state, local governments, districts, public universities, colleges, and schools, and other governmental instrumentalities from discriminating against or giving preferential treatment to any individual or group in public employment, public education, or public contracting on the basis of race, sex, color, ethnicity, or national origin.”¹⁰⁸ The ballot label had read: “Prohibition Against Discrimination or Preferential Treatment by State and Other Public Entities. Generally prohibits discrimination or preferential treatment based on race, sex, color, ethnicity, or national origin in public employment, education, and contracting.”¹⁰⁹ On July 26, 1996, the real parties of interest—the League of Women Voters of California, Bill Jones Secretary of State, and the NO on 209 Campaign had petitioned the Superior Court of Sacramento for a writ of mandate, claiming the aforementioned ballot title and label petitioner were misleading in that they did not define the actual purpose of the Proposition.¹¹⁰ These parties claimed the purpose of Proposition 209 was to end

¹⁰⁶ *Peremptory writ of mandate (or mandamus)*, Nolo’s Plain-English Law Dictionary Web.

¹⁰⁷ *Lungren v. Superior Court of Sacramento*, 48 Cal. App. 4th 435 (1996). Retrieved from <https://www.leagle.com/decision/199648348calapp4th4351475>

¹⁰⁸ *Lungren v. Superior Court of Sacramento*, 48 Cal. App. 4th 435 (1996). Quote Retrieved from <https://www.leagle.com/decision/199648348calapp4th4351475>

¹⁰⁹ Voter Information Guide for 1996, General Election (1996). https://repository.uchastings.edu/ca_ballot_props/1139

¹¹⁰ *Lungren v. Superior Court of Sacramento*, 48 Cal. App. 4th 435 (1996). Retrieved from <https://www.leagle.com/decision/199648348calapp4th4351475>

affirmative action by state and local government, and the Superior Court had concurred with that particular opinion, mandating him to change the title and label.¹¹¹

The Court of Appeals ordered petitioner Lungren's writ of mandate, saying the Superior Court had no legal or factual basis to intervene with Lungren's legislative authorities to create a ballot title and label.¹¹² The Court also ruled that Lungren's provision of the ballot title and label were sufficient in expressing the general purpose of Proposition 209, saying the title and summary did not need to list all of a measure's provisions. In addition, the Court looked at the wording of the actual Proposition and compared it to the wording of the ballot title and summary, concluding his title, the accompanying summary, and label had taken verbatim some of the Proposition's wording and thus was not misleading in describing the real purpose of the Proposition.¹¹³ Therefore, despite efforts of its opponents, Proposition 209 made it on the November 5, 1996 ballot with said ballot titles, summaries, and labels using the words "discrimination" and "preferential treatment" rather than "affirmative action."¹¹⁴ The opponents of Proposition 209 during the *Lungren v. Superior Court of Sacramento*, 48 Cal. App. 4th 435 (1996) case argued that intent behind ending "preferential treatment" was synonymous with the end of affirmative action.¹¹⁵

3.5 Diversity in Higher Education: The Legal Debate and Its Benefits

¹¹¹ Ibid.

¹¹² *Lungren v. Superior Court of Sacramento*, 48 Cal. App. 4th 435 (1996). Retrieved from <https://www.leagle.com/decision/199648348calapp4th4351475>

¹¹³ Ibid.

¹¹⁴ Voter Information Guide for 1996, General Election (1996). https://repository.uchastings.edu/ca_ballot_props/1139

¹¹⁵ *Lungren v. Superior Court of Sacramento*, 48 Cal. App. 4th 435 (1996).

UCLA and UC Berkeley’s Chancellors, Charles E. Young and Chang-Lin Tien, respectively, publicly condemned the Proposition, as expressed in an *LA Times* article published on October 21, 1996.¹¹⁶ Although all nine UC chancellors opposed the 1995 SP-1 and SP-2, which passed a year before Proposition 209’s passage, Young and Tien were the two highest ranking UC officials to publically speak against the Proposition’s passage.¹¹⁷ Young, who along with Tien, had submitted his letter of resignation effective July 1997, had been an ardent supporter of “educational opportunity, inclusiveness and the value of ethnic and cultural diversity to the university experience.”¹¹⁸ Similar to Young, Tien too supported affirmative action and equitable policy as a means to reach a “level playing ground”.¹¹⁹ He predicted that Proposition 209 would negatively affect both minorities and women. In an attempt to counter the effects of SP-1 after its passage, Tien launched the Berkeley Pledge, partnering UC Berkeley with California’s K-12 public school pipeline and donating his salary increase in 1995 to the program.¹²⁰ The two chancellors argued the Proposition would negatively affect the diversity of higher education institutions, which they directly correlated with the quality of higher education, predicting that if it passed, the UC would over represent the White and Asian American populations.

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¹¹⁶ Wallace, Amy, and Bettina Boxall, “Chancellors Say Prop. 209 Would Hurt Education.” *Los Angeles Times*, Los Angeles Times, 21 Oct. 1996. http://articles.latimes.com/1996-1021/news/mn-56217_1_higher-education.

¹¹⁷ Ibid.

¹¹⁸ As quoted in: luskin.ucla.edu/person/charles-young/

¹¹⁹ As quoted in “Chancellors Say Prop. 209 Would Hurt Education.” *Los Angeles Times*, Los Angeles Times, 21 Oct. 1996. articles.latimes.com/1996-1021/news/mn-56217_1_higher-education.

¹²⁰ Cummins, John et al. *In Memoriam of Chang-Lin Tien*. Retrieved from senate.universityofcalifornia.edu/files/inmemoriam/html/Chang-LinTien.htm

Their argument that diversity in higher education directly correlated with better quality was since heavily studied and supported. Gurin et al. (2002) at the University of Michigan provided empirical evidence of the benefits of diversity. Before introducing their research and analyses of diversity's benefits, Gurin et al. outlined the historical debate around the topics of diversity and race as a consideration in admissions policy. They argued that, despite the judgment in *Regents of University of California v. Bakke* (1978) establishing diversity as a compelling government interest, lower courts varied on their rulings on whether or not diversity was truly a compelling interest. Their examples of such rulings were *Gratz v. Bollinger, et al* (2000) and *Grutter v. Bollinger, et al* (2002) as introduced below.

***Gratz v. Bollinger et al.* 539 U.S. 244 (2000)**

Jennifer Gratz, a white Michigan resident, had applied to the University of Michigan in 1995, and Patrick Hamacher, also a white Michigan resident, had applied in 1997; both were subsequently rejected because although they qualified, they were not considered to be competitive with the other applicants.¹²¹ The two filed a lawsuit in October 1997 against the University of Michigan, its College of Literature, Science, and the Arts, James Duderstadt the President until 1996, and Lee Bollinger, Duderstadt's successor.¹²² They, the petitioners, argued the University had racially discriminated against them and thus violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the 1964 Civil Rights Act (App. 33). In addition to considering race, University of Michigan's Office of Undergraduate Admissions at the time of their

¹²¹ *Gratz v. Bollinger*. 539 U.S 244 (2000). Retrieved from <https://www.law.cornell.edu/supct/html/02-516.ZO.html>

¹²²Ibid. App. 33

applications, also based a student's admissions on the high school quality of the student, the strength of the high school's curriculum, any unusual circumstances faced by the student, the student's area of residence and the student's alumna relationships.¹²³ The petitioners challenged both the University's use of race in admissions and the University's argument that diversity was a compelling government interest.¹²⁴ The University, like the UC system, considered African Americans, Latinx and American Indians to be URMs and from application years 1995-1998 admitted "virtually every qualified applicant" from these groups as soon as possible.¹²⁵ In fact, in 1997, the University automatically awarded 20 points (out of the 100 points to guarantee admissions) to every URM applicant. In addition, during 1995-1998 period, the University accepted rolling applications and reserved a certain number of "protected seats" for students considered to be under the "protected categories" such as athletes, international students, ROTC students, and URMs.¹²⁶ Bollinger et al. defended the University of Michigan's method of considering race as a factor for admissions by arguing the educational benefits from having a racially and ethnically diverse population was narrowly tailored to serve the compelling government interest. The District Court agreed partially, in that they concluded Bollinger et al. presented a valid argument that racial diversity was a compelling government interest. Yet in regards to the practice of reserving "protected seats" the District Court determined the practice was a quota system, and thus unconstitutional.

¹²³ Part B of *Gratz v. Bollinger*. 539 U.S 244 (2000). Retrieved from <https://www.law.cornell.edu/supct/html/02-516.ZO.html>

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

After the District Court's rulings, petitioners and respondents both appealed parts of the Court's decisions to the Six Circuit Court of Appeals.¹²⁷ Although petitioners argued race should not even be a consideration in admissions, they argued that if it were, the way University of Michigan practiced affirmative action was not narrowly tailored enough to be a compelling government interest and did not align with the guidelines that Powell had established in *Regents of University of California v. Bakke* (1978).¹²⁸ Four out of the seven Supreme Court Justices, whose opinion was delivered by Justice Rehnquist, agreed that because this case dealt with race, it had to be strictly scrutinized.¹²⁹ To meet the strict scrutiny standard, the University of Michigan had to prove how its affirmative action practices were narrowly tailored to the compelling state interest of increasing educational diversity.¹³⁰ The university had defended their practices by claiming racial diversity was a compelling interest. The Court concluded the respondent's defense of its affirmative action practices to simply increase diversity was not narrowly tailored to a compelling government interest.¹³¹ The Court, in a 6 to 3 majority decision, also concluded that the University violated both the Equal Protection Clause and Title VI, reversing the District Court's Order.

***Grutter v. Bollinger et al.* 539 U.S. 306 (2002)**

Petitioner Barbara Grutter, a white Michigan resident, was rejected from the University of Michigan's Law School in 1997, despite her 3.8 GPA and 161 LSAT

¹²⁷ *Grutter v. Bollinger*, 539 U.S. 309 (2002). Retrieved from <https://www.law.cornell.edu/supct/html/02-241.ZO.html>

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

score.¹³² The Law School admissions policy considered various talents, experiences, and academic ability to create a diverse student body.¹³³ Although the University intentionally did not define diversity in racial or ethnic terms, it did commit to “the inclusion of students from groups which ha[d] been historically discriminated against, like African-Americans, Hispanics and Native Americans, who without this commitment might not be represented in [their] student body in meaningful numbers” (App. 120). At the District Court trial, Richard Lempert, chair of the committee that drafted this policy, emphasized that it was meant to accept students who would bring different viewpoints distinct from those of students who did not face discrimination.¹³⁴ He also clarified that although Asian Americans and Jewish Americans also faced historical discrimination, they were not explicitly mentioned in the policy because substantial numbers from the two were being admitted (App. 213a). The Law School, like its undergraduate university and the UC system, recognized the same three populations as URMs in higher education. Yet unlike the UCs, the University of Michigan was not bound to a race-neutral admissions policy and recognized race as one of the factors considered during the process. Grutter claimed this consideration of race played a predominant role in her rejection, arguing that the University did not have a compelling interest to consider race.¹³⁵ The District Court stated it would determine whether or not the Law School’s claim on the benefits of a diverse student body constituted a compelling interest. Dennis

¹³²Part A of *Grutter v. Bollinger*, 539 U.S. 309 (2002). Retrieved from <https://www.law.cornell.edu/supct/html/02-241.ZO.html>

¹³³ *Grutter v. Bollinger*, 539 U.S. 309 (2002). Retrieved from <https://www.law.cornell.edu/supct/html/02-241.ZO.html>

¹³⁴*Ibid.*

¹³⁵ Part A of *Grutter v. Bollinger*, 539 U.S. 309 (2002). Retrieved from <https://www.law.cornell.edu/supct/html/02-241.ZO.html>

Shields, the former Director of Admissions, clarified that the Law School did not practice any type of quota systems when it emphasized having a “critical mass” of URM students.¹³⁶ Erica Munzel, Shield’s successor, supported his claim and defined “critical mass” to mean having “meaningful representation” in the classroom setting where URM students feel comfortable enough to participate (App. 208a-209a). She also added that such a critical mass of URM students would not be possible if the admissions decisions were only based on GPAs and LSAT scores, also known as color-blind measurements of a student’s past meritorious achievements (App. 208a-209a). Addressing color-blind policy, the Law School’s Dr. Stephen Raudenbush predicted that if it adopted color-blind admissions, there would be a significant decrease in the URM populations (App. 208a-209a). After the trial, the District Court ruled the Law School’s consideration of race was unconstitutional and that diversity was not a compelling interest here (App. 208a-209a).

The Sixth Circuit Court of Appeals then took jurisdiction of the case and in its ruling, referred to Powell’s opinion in *Bakke* (2000): diversity was indeed a compelling state interest as used by the University. The Court also added that the Law School’s consideration of race was narrowly tailored, since race did not play a predominant role in determining a student’s admissions (*Grutter* CA6 2002). Despite this judgment, four judges dissented and thought the Law School’s use of race was unconstitutional.

The U.S. Supreme Court issued a writ of certiorari to review the case, due to the controversy of diversity as a compelling interest and the use of race in admissions to achieve said diversity. Although Powell set the precedent of considering race as a factor

¹³⁶ Part B of *Grutter v. Bollinger*, 539 U.S. 309 (2002). Retrieved from <https://www.law.cornell.edu/supct/html/02-241.ZO.html>

for admissions in public universities for the interest of diversity, future court rulings and opinions varied. Therefore, *Grutter v. Bollinger's* decision (2002), which was delivered by Justice O'Connor, settled the discussion by adopting Powell's view that diversity was compelling enough to warrant the use of race in admissions. The Court added that in all government actions dealing with race, the context mattered and strict scrutiny must be used¹³⁷. Specifically, for the Law School, the Court ruled the University was constitutional in its consideration of race as a simple "plus" not a determinant factor of admissions.¹³⁸ This was further supported by the evidence respondents and scholars like Gurin et al. provided about the educational benefits of diversity.

Benefits of Diversity in Education:

Just as the two UC Chancellors who opposed SP-1, SP-2 and Proposition 209, believed in the benefits of diversity in education, so too did the University of Michigan and Gurin et al (2002). In light of the legal arguments over diversity as a compelling interest and over race-based admissions, Gurin et al. (2002) conducted a study at the University of Michigan and the national level to prove how diversity in universities was beneficial. After exposing White, Asian, Latinx and African American students to three diversity experiences—structural diversity from attending a college with numerical representation of races; informal interactional diversity outside of the classroom; and classroom diversity of learning experiences from peers in the classroom—Gurin et al. (2002) found that interaction between diverse groups resulted in both learning outcomes and democracy outcomes (358). The learning outcomes from exposure to racial diversity

¹³⁷ *Grutter v. Bollinger*, 539 U.S. 309 (2002). Retrieved from <https://www.law.cornell.edu/supct/html/02-241.ZO.html>

¹³⁸ *Ibid.*

were active thinking skills, intellectual engagement and motivation (Gurin et al. 2002, 334). The democracy outcomes were skills such as increases in active citizenship engagement, cultural understanding, perspective-learning, among others (Gurin et al. 2002, 334). The authors emphasized that in order for such benefits to be realized, students needed to interact with diverse peers in high quality interactions (Gurin et al. 2002, 390). And in order for them to interact with diverse peers, they needed to be exposed to racial diversity at the campus, which meant racial diversity had to be present in the first place (Gurin et al. 2002, 390).

In the context of the UC system and its stance on diversity, the UC President and Chancellors appeared as amici, or friends of the court, to defend diversity as a compelling interest in *Fisher v. University of Texas at Austin* (2015). In 1997, the University of Texas had implemented a policy that accepted residential applicants who were at the top ten percent of their class and considered race as a factor for the remainder of applicants who were not in the top ten percent.¹³⁹ In 2008, Abigail Fisher, a white female who did not graduate in the top ten percent of her class, was rejected and filed a suit claiming the university violated the Equal Protection Clause by considering race.¹⁴⁰ The University of Texas at Austin, just as the University of Michigan, responded that considering race was a narrowly tailored means of attaining increased diversity. The District Court agreed with the University of Texas's argument that its practice of considering race was narrowly tailored.¹⁴¹ The United States Court of Appeals affirmed the District Court's

¹³⁹ *Fisher v. University of Texas at Austin*, 570 U.S. (2013) Web. Retrieved from <https://www.oyez.org/cases/2012/11-345>

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

decision, and Fisher appealed to the Supreme Court. In this Supreme Court case, the UC President and Chancellors appeared as amici and defended the University of Texas at Austin and its race-conscious admissions, by bringing up their own experience with race-neutral admission policy and the corresponding decrease in URM populations.¹⁴² The UC President and Chancellors additionally supported the idea of critical mass, referring to their biennial survey which asked whether students of color felt respected on their campuses;¹⁴³ the students' responses were often directly related to whether the URM representation on campus had neared critical mass (10). Although the Supreme Court in *Fisher v University of Texas at Austin* (2015), ruled race could be considered in admissions, the practice needed to be held under strict scrutiny to comply with the Equal Protection Clause. This meant the University needed to prove the use of race was absolutely needed to achieve diversity that could not otherwise be possible with race-neutral policies.¹⁴⁴ The UC in the Brief of the President and the Chancellors of the University of California as Amici Curiae in Support of Respondents (2015), referred to its own experience with race-neutral policies, stating the URM enrollment after Proposition 209 never reached the same levels present before Proposition 209's implementation (15). The race-neutral policies did not allow the UC to proportionately represent the state's populations, nor did they help nurture a critical mass of URMs in its more selective universities (15). The opinions of the UC in its defense of the University

¹⁴² Brief of the President and the Chancellors of the University of California as Amici Curiae in Support of Respondents, *Fisher v. University of Texas at Austin*, 570 U.S. (2015)

¹⁴³ University of California, 2012 Accountability Report at 80, <http://www.universityofcalifornia.edu/accountability/documents/accountabilityreport12.pdf> ("2012 Accountability Report"); 2

¹⁴⁴ *Fisher v. University of Texas at Austin*, 570 U.S. (2013) Web. Retrieved from <https://www.oyez.org/cases/2012/11-345>

of Texas reveals the UC's position on affirmative action and race-conscious policies: They believe it is beneficial to educational diversity. This educational diversity, as outlined by Gurin et al., is in turn, beneficial to the students' learning experiences.

Chapter 4: UC Wide and UC-Santa Barbara Efforts to Combat Effects of Proposition 209

This chapter discusses and analyzes such race-neutral policies that the UCs mentioned in their Brief of the President and the Chancellors of the University of California as Amici Curiae in Support of Respondents, *Fisher v. University of Texas at Austin* (2015). I primarily use research provided by William C. Kidder and Patricia Gandara to discuss the policies implemented by the UC system as a whole. I also explain outreach programs employed by UC Santa Barbara to target diverse groups while still complying with Proposition 209. Unfortunately at the admissions level, besides being informed that the Office of Admissions could not see the races of the individual applicants,¹⁴⁵ I was unable to attain the details on the exact admission policies from UC Santa Barbara. I recognize that without this information, I would not be able to control for changes in admissions policies specific to UC Santa Barbara, changes which could have significantly affected URM and AANHPI admissions post-Proposition 209. Although I could not get detailed admissions information, Marcus Mathis informed me after Proposition 209 was implemented, UC Santa Barbara launched “advocacy” programs for low-income communities unfamiliar to college culture and sent out admissions counselors and workshops to these high schools to help educate potential applicants on eligibility to college.¹⁴⁶ The logic behind such programs was to increase the number of applicants who applied and increase the quality of the applicants by helping

¹⁴⁵ Mathis, Marcus. Assistant Director for Diversity Initiatives at UC Santa Barbara. Personal Interview. 23 March 2018.

¹⁴⁶ Ibid.

prepare them with the workshops.¹⁴⁷ Specifically, UC Santa Barbara's Early Academic Outreach Program program serves five underserved high schools in the county of Santa Barbara, three in the county of Ventura, and one in the county of Kern, in hopes to assist students from underperforming high schools prepare for college, apply to college and for financial aid, and prepare them for the work-life after graduating from college.¹⁴⁸ Unfortunately, we also discussed the difficulty of quantitatively measuring the quality and effectiveness of outreach programs throughout a course of time, as also explained by Kidder and Gandara.

In *Two Decades After the Affirmative Action Ban: Evaluating the University of California's Race-Neutral Efforts* (2015), the authors analyze the UC's various race-neutral alternatives such as outreach, partnerships with schools with lower income and minority students, college preparation programs, and targeted recruitment programs. They ultimately concluded that despite these efforts, the diversity levels never recovered to the same levels from the pre-209 era, proving the same point as the amici in *Fisher v. University of Texas at Austin* (2015).¹⁴⁹ First, Kidder and Gandara (2015) analyze the Outreach and Academic Preparation Programs spearheaded by the Outreach Task Force, intended to help prepare the educationally disadvantaged through outreach (4). In 1997, the Outreach Task Force, later renamed the Student Academic Preparation and Educational Partnership (SAPEP), created a four-part report outlining the main goals of the UC's outreach efforts (Kidder and Gandara 2015, 4). The four main objectives were

¹⁴⁷ Mathis, Marcus. Assistant Director for Diversity Initiatives at UC Santa Barbara. Personal Interview. 23 March 2018.

¹⁴⁸ Early Academic Outreach Program. (n.d). Retrieved from <http://eao.sa.ucsb.edu/about-eaop/our-sites>.

¹⁴⁹ Kidder, and Patricia Gandara. . 2015. *Two Decades After the Affirmative Action Ban: Evaluating the University of California's Race-Neutral Efforts*.

partnerships between the UCs and over 50 underperforming public high schools; expansion of existing academic-development programs; increase in informational outreach to students, families, teachers and counselors; research and evaluation of the lack of diversity and the effectiveness of the aforementioned outreach efforts (Kidder and Gandara 2015, 4).¹⁵⁰ After the implementation of Proposition 209, the UC system increased its outreach budget from \$60 million to \$120 million to work directly with the student populations they suspected would be most affected by the Proposition (Kidder and Gandara 2015, 3). Yet despite the initial high level of funding, the authors note that it was a short lived expenditure as in 2014-2015, the amount spent on these programs decreased back down to \$61 million (Kidder and Gandara 2015, 3). Accounting for inflation, California's funding for the UCs on a per-student basis decreased from \$13,870 per student in 1995-1996 during the years SP-1 and the Proposition passed, to only \$8,280 per student in 2014-2015 (Kidder and Gandara 2015, 3).

In addition to the funding problem of the outreach and academic preparation programs that the authors mentioned, they also note that there was a massive lack of information about the UC system within the Latinx community (Kidder and Gandara 2015, 4). Although the UCs were reaching out to 50 underperforming high schools and their feeder schools, this number was only 5% of the entire group of underperforming schools in California (Kidder and Gandara 2015, 4). Additionally, though there was a focus on these underperforming schools, the traditional URM students were so widely distributed

¹⁵⁰ Kidder, and Patricia Gandara. *Two Decades After the Affirmative Action Ban: Evaluating the University of California's Race-Neutral Efforts*. 2015. See also Brief of the President and the Chancellors of the University of California as Amici Curiae in Support of Respondents, *Fisher v. University of Texas*, 570 U.S. (2015).

in California that these efforts were not specifically targeting them (Kidder and Gandara 2015, 5). One noteworthy observation made by the authors is that although these targeted outreach efforts did not necessarily target the traditional URMs, it did reach a smaller percentage of lower-achieving White and Asian Americans (Kidder and Gandara 2015, 5). The authors note that the small group of Asian American recipients were low-income Southeast Asians (Kidder and Gandara 2015, 5). Despite mentioning this subgroup within the AANHPI group, they also mention that one third of all Asian American students and White students constituted one third and one fifth of the highest performing schools, respectively (Kidder and Gandara 2015, 5). Yet these high performing schools, or the top-most decile school, consisted of only 3% Latino students and 4% African American students (Kidder and Gandara 2015, 5). These are noteworthy observations as they demonstrate one of the main points of my thesis: within the lower-achieving group of high school students, there exist Asian students, but because of the majority of Asian students coming from the top-most decile school, this fact is obscured and often unnoticed. If noticed, as in this report, it is mentioned as another surprising fact, with no further implications made.

In addition, although Kidder and Gandara do not quantify the actual effects the race-neutral policies had on the student populations throughout the years, they comment on some of the available short-term measureable effects and also explained why there existed such a lack of quantitative studies on the topic. For example, according to them, the Early Academic Outreach Program (EAOP) served around 37,000 students in 2013-2014, the Math, Engineering, and Science Achievement (MESA) served around 17,000 students in 2013-2014, and Puente served around 5,000 students in 2013-2014 (Kidder

and Gandara 2015, 8). Although Kidder and Gandara present the actual numbers of those served by the specific SAPEP-led outreach and academic preparation programs, these results are just from one year. Thus, the study lacked the comparative analysis needed for a thorough, time-sensitive, study of the effects of the Proposition and those of the subsequent race-neutral policies.

Though Kidder and Gandara do not provide a timeline of effects the Proposition had on individual groups within the traditional URMs and the AANHPI populations, they pinpoint the reason why data collections on intervention programs, such as the UC's outreach efforts, was so challenging, a critique I had for Santos et al. Kidder and Gandara, in fact, list a number of issues with measuring the outcomes of race-neutral policies. Kidder and Gandara (2015) summarize one of the main issues as such:

The general paucity (with limited exceptions, e.g., Grumbach & Chen, 2006; Quigley 2003b) of available studies adopting quasi-experimental designs or other robust matching techniques so that participants and nonparticipants (at the individual and school level) are truly comparable with regard to background characteristics (which would support causal inferences about program efficacy). Since many academic and out-of-school factors affect academic performance and students often experience more than one intervention, such research is extremely complicated and very expensive to conduct; it is rare that funders are willing to support such studies, especially in the face of inadequate funds to deliver the program” (7).

The authors also mention there was no way to accurately and consistently, over time, measure the “dosage” of the program each student received (Kidder and Gandara 2015, 11). Dosage could be measured by the time a teacher or assistant spent on a student to prepare them for college, or it could be how other resources from the programs were used. In sum, although there exists numerical data on how many students were reached out to through these race-neutral efforts, the number of students reached does not measure the amount of outreach efforts each student received (Kidder and Gandara 2015, 11). In addition, because of the variability of programs, ranging from informational outreach, academic tutoring or other forms of academic preparation, college counseling, and more, there was no consistency in measuring how much each student benefited from such interactions (Kidder and Gandara 2015, 10-12). These problems in measurement are also applicable in the context of measuring the effectiveness of outreach and admission programs at specific UCs, such as UC Santa Barbara. I mention this again to say that if there are significant changes in Filipino and NHPI admission rates, after Proposition 209, it could be due policies such as these, which I do not control for in my regression.

Chapter 5: Research Design

5.1 Research Question, Hypotheses, and Operationalization of Variables

Through my research design and regression analysis I answer the following questions: Was there a significant change in the rates of admissions for all population groups after the implementation of Proposition 209? Specifically, did Proposition 209 have a bigger effect for the Filipino and NHPI groups' rates of admissions versus the White group's during the years 1994-2017? My first hypothesis was that, relative to the rate of White students admitted from years 1994-2017, the Filipino population demonstrated a significantly disproportionate effect on their rate of admissions after the implementation of Proposition 209. Secondly, I hypothesized that a similar pattern would be seen in the rates of admissions for the NHPI population. Relative to the rates of White students admitted from years 1994-2017, I posited the NHPI population demonstrated a significantly disproportionate effect on their rate of admissions after the implementation of Proposition 209. Since I compared the rates of all available populations against a control group, this was a difference in difference design. I compared the changes in outcomes, also known as the group-specific rates of admissions, between the treatment groups and the control group for the year pre-209 and post-209.

Dependent Variable:

The dependent variable, or the outcome being studied, was the yearly, group-specific rates of admissions into UC Santa Barbara over the time span of 1994-2017. The rates of admission per population group each year was calculated through R-Studio, as per the following equation:

$$\left(\frac{\text{Total Number of Admitted Students of Specified Ethnicity}}{\text{Total Number of Applicants of Specified Ethnicity}} \right)$$

The units of analysis therefore were the population groups and the given year. I ran a regression using R to see if after Proposition 209's implementation in 1998, the rates for any of the other population groups were significantly, negatively affected, when compared to the rates of the White population. Although I included all available AANHPI, White, Latinx, African American, American Indian, White, International and Unknown populations in the regression model, the rates of admissions directly relevant to my hypotheses were those for the Filipino and NHPI populations. Therefore, the dependent variable, also referred to as the rate of admissions for a specific population, was regressed on the interaction of two independent variables: First, the race-specific group and second, the Proposition 209 effect. In order to prove or disprove my hypotheses I examined whether the rates of admissions, controlled for changes in rate of applications, among Filipino and NHPI groups significantly increased or decreased after Proposition 209 was implemented, relative to the rates of the White population.

Independent Variables: Proposition 209 and Race-Specific Group

The first independent variable was the race of each group specific population. Since I used all available ethnicities in my regression model, I listed all available categories in my dataset: "Filipino", "Pacific Islander", "Chinese", "Korean", "East Indian", "Japanese", "Vietnamese", "Chicano", "African American", "Indian", and "White" and coded them with a "0" or "1" representing a "No" for "0" and a "Yes" response for "1". Therefore, the race of each population in my model acted as categorical

independent variables. This variable was labeled Group Specific Effect in my regression table presented below.

The second independent variable, or the treatment variable, was the implementation of Proposition 209—as opposed to the passage of Proposition 209—on the 1998 fall quarter Freshman class admissions. Proposition 209’s implementation in 1998 fall quarter admissions represented a change in policy from years prior to 1998.¹⁵¹ This was thus labeled Proposition 209 effect in the regression table. In order to input the independent variable into R, I coded the year variables as “0” or “1”, with “0” representing non-passage of the Proposition, and “1” representing the passage of Proposition. This meant for every year Proposition 209 has passed, it was coded as a “1”, so every year starting from 1996 onward had a value of “1”, including 1998 when the Proposition actually took effect, and 2002 when the process of comprehensive review took place. Although I began coding “1” for the passage of the Proposition, the interaction being studied was that of the effect of Proposition, which is why 1998, not 1996, was the year I focused on.

Since both independent variables, race and Proposition 209 implementation, were important factors that my dependent variable, or group specific rates of admissions over time, depended on, I interacted the two to create a Proposition 209 dummy variable x Group Specific effect, as shown in the second half of the regression table. This

¹⁵¹ *Guidelines for Implementation of University Policy on Undergraduate Admissions (2012)*
https://www.ucop.edu/student-affairs/files/GUIDELINES_FOR_IMPLEMENTATION_OF_UNIVERSITY_POLICY_on_UG_ADM_Revised_July2012.pdf

interaction accounted for both the implementation of Proposition 209 and the race of the population group.

Control Variables:

In order to measure significance, the reference group, or control group, to which each group's rate of admissions is compared to, was the rate of admissions for the White student population. Thus the first coefficient intercept is the average slope of the rate of acceptance of White students before the implementation of Proposition 209. So the inputs for the population categories after the Group Specific Effect are in relation to and in comparison to the White students and their rates. Therefore, the White population acted as a baseline from which all other population's rates were compared to.

In addition, in my linear regression code, I controlled for the passage for Proposition 209 in 1996 and for implementation of comprehensive review in 2002, by adding "+ Prop 209 Passage + Comprehensive Review" after the line of code interacting the two independent variables. I also controlled for fixed-effect analysis by adding the indicator "0" or "1" variable for each year in my dataset. I did this because I thought there could be something unique about each particular year that I might not account for with the other variables of race and Proposition 209. Such variables could be the economic crash in 2008, or admissions policy changes implemented in certain years, beside comprehensive review which I controlled for in my regression model, or other year-specific effects.

5.2 Presentation of Regressions

Table 1 represents the regression model outcomes. The first half of the table, ending with the entry of "Comprehensive Review" is the starting point for all the race

specific groups and the slopes in admissions rates before the implementation of Proposition 209, in comparison to the White students' admissions rates. The second half of Table 1, starting after "Group X Prop 209 Interaction Effect", represents the interaction effect between the two independent variables of population specific groups and implementation of Proposition 209. This means after Proposition 209 passed, these were the effects on the group-specific rates of admissions for each population group, compared to those of the control population. This interaction effect is what I needed to prove or disprove my hypothesis, as it demonstrated whether or not the Filipino and NHPI populations' rates of admissions changed significantly after the implementation of Proposition. The Pacific Islander category on the regression and subsequent figures denotes the NHPI population.

Figure 1 graphs all of the rates of admissions for each available ethnicity throughout the course of 1994 to 2017. Due to the large number of ethnicities, it was hard to distinguish between the groups. Therefore, after running the regression on Table 1, and noting which groups were significantly affected by the interaction of ethnicity and the Proposition 209 effect in 1998, as evident in in the second half of the regression table, we clustered together the groups with insignificant results. Then we re-graphed and created Figure 2, specifically labeling only the groups with statistically significant effects and clustering the rest in aggregate categories.

Table 1: Regression Model

	Estimate	Std. Error	t-value	Pr(> t)
(Intercept)	0. 847149	0. 024552	34.504	< 2e-16 ***
Prop 209 Effect	-0.204979	0. 028781	-7.122	8.75e-12***
Group Specific Effects	-	-	-	-
African American	-0.06875	0. 031298	-2.197	0.028844 *
American Indian	0.01741	0. 031298	0.556	0. 578336
Latinx	-0.02887	0. 031298	-0.922	0. 357067
Chinese	-0.01976	0. 031298	-0.632	0. 528127
East Indian/Pakistani	-0.03985	0. 031298	-1.273	0. 203975
Filipino	0.01178	0. 031298	0.377	0. 706815
International	-0.31609	0. 031298	-10.100	<2e-16 ***
Japanese	0.00855	0. 031298	0.273	0.784805
Korean	-0.10800	0. 031298	-3.451	0.000644***
Other Asian	-0.02903	0. 031298	-0.928	0. 354288
Other/Unknown	-0.01678	0. 031298	-0. 536	0. 592230
Pacific Islander	-0.10010	0. 031298	-3.198	0. 592230***
Vietnamese	-0.00388	0. 038820	-0.100	0. 920391
Prop 209 Passage	-0.122628	0.017205	-7.127	8.47e-12 ***

Comprehensive Review	-0.120161	0.016729	-7.183	6.02e-12 ***
-	-	-	-	-
Group X Prop 209 Interaction Effect	-	-	-	-
African American x Prop 209	-0.088649	0.034285	-2.586	0.010218 *
American Indian x Prop 209	-0.062456	0.034285	-1.822	0.069556
Latinx x Prop 209	-0.048929	0.034285	-1.427	0.154641
Chinese x Prop 209	0.041382	0.034285	1.207	0.228441
East Indian/Pakistani x Prop 209	0.034778	0.034285	1.014	0.311264
Filipino x Prop 209	-0.114932	0.034285	-3.352	0.000910 ***
International x Prop 209	0.196216	0.034285	5.723	2.66e-08 ***
Japanese x Prop 209	-0.005583	0.034285	-0.163	0.870764
Korean x Prop 209	0.053832	0.034285	1.570	0.117498
Other Asian x Prop 209	-0.025096	0.034285	-0.732	0.464787
Other/Unknown x Prop 209	0.026467	0.034285	0.772	0.440773
Pacific Islander x Prop 209	-0.016207	0.034285	-0.473	0.636781
Vietnamese x Prop 209	-0.015101	0.041266	-0.366	0.714691

152

152 *** Fixed effect for time dummy variables

Figure 1: Ethnicity and Admittance

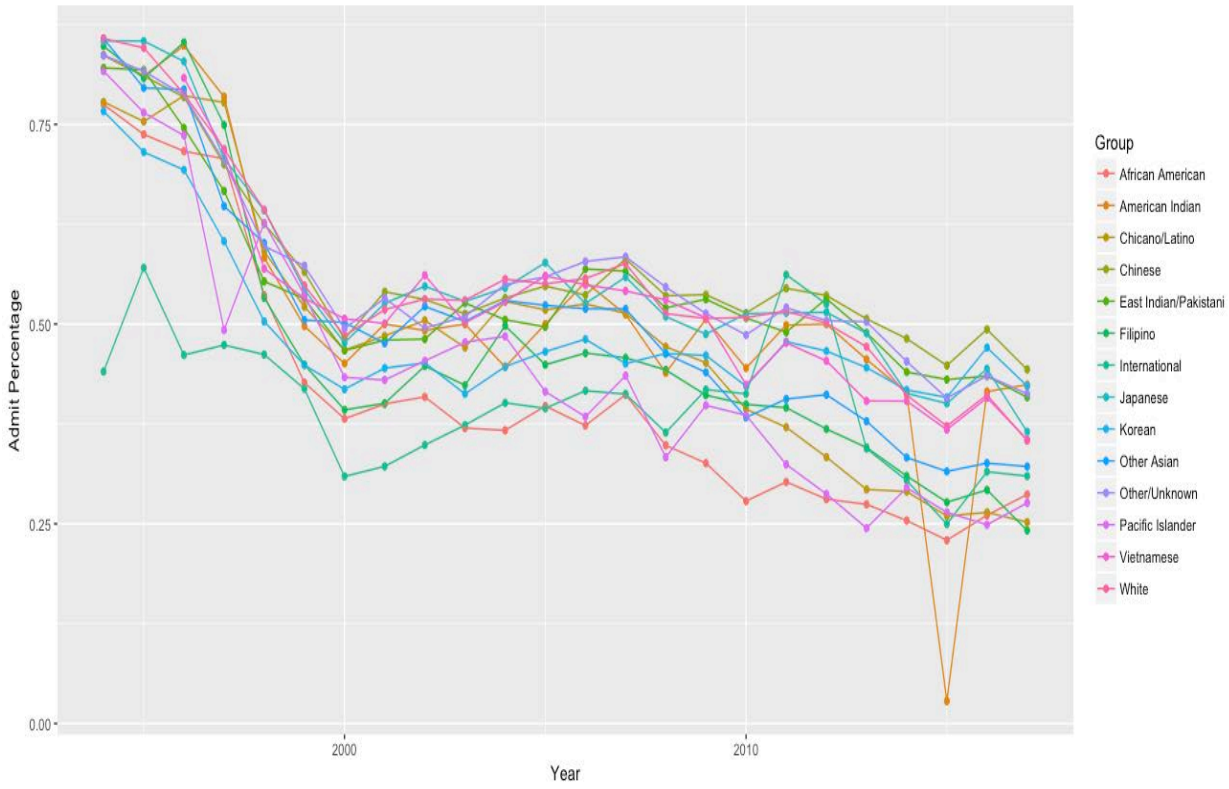
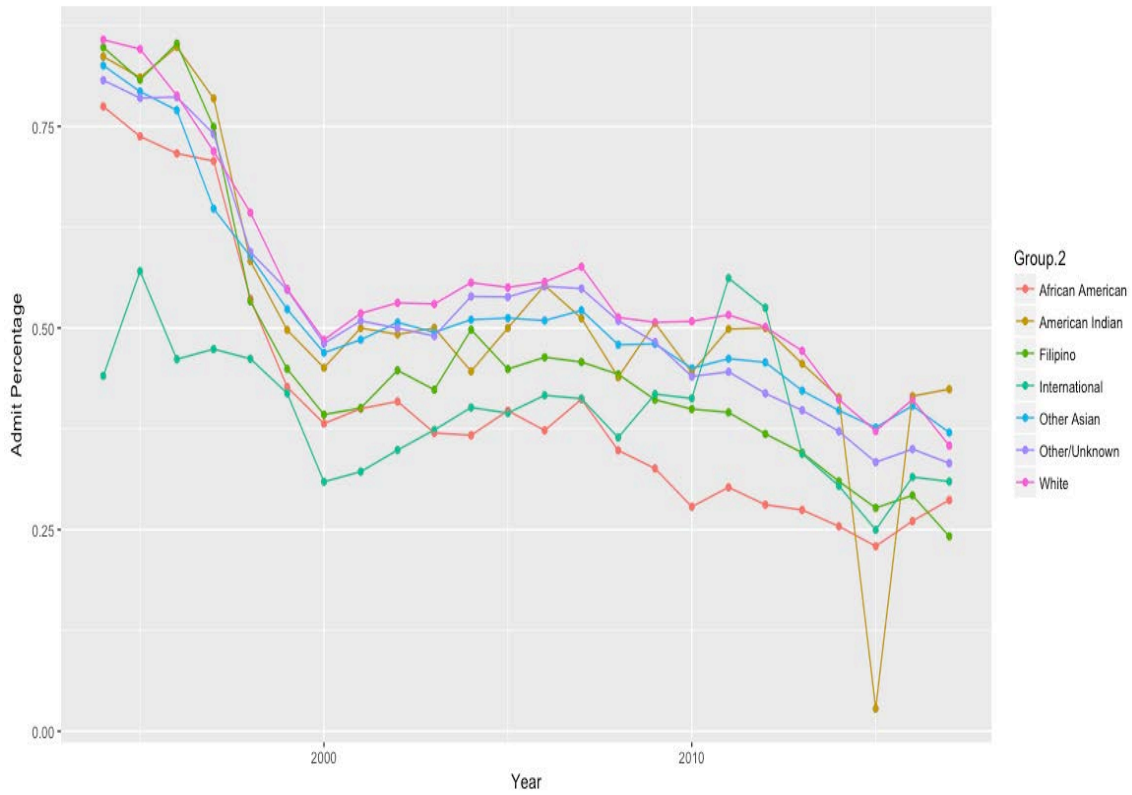


Figure 1.2: Ethnicity and Admissions



Regression Results

After performing the regression on my data using R software, I saw that after Proposition 209 was implemented, relative to the rates for the White population, the rates of admissions for the Filipino population, the African American population, and the International population saw significant changes. In order to determine whether or not the effects on admission rates after the implementation of Proposition 209 were significant, I looked at the p-values in the second half of Table 1. These three groups' admissions

rates, with p-values less than 0.05 were thus considered significant. According to the regression calculations, the NHPI population rates of admission were not significantly affected after the implementation of Proposition 209.

Chapter 6: Analysis of Results

In order to determine whether or not group specific rates significantly changed after the implementation of Proposition 209, I looked at the p-values in the second half of Table 1, specifically looking for the populations whose p-value were less than 0.05. After the implementation of Proposition 209, the rates of African American students, Filipino students, and International students demonstrated statistically significant results ($p < 0.05$) and were marked with the “***” symbol. The second half of Table 1 measured the differential effects between each of the group rates and the White control group rates, after the implementation of Proposition 209. In the context of the significantly affected groups and the control group, the results meant the estimated treatment effect was steeper for Filipinos, African Americans, and International students’ rates compared to the White populations’. One could also visually note that after comprehensive review was implemented in 2002, all categories on figure 1 saw slight increases in their rates of admissions. This demonstrates that although comprehensive review seemed to have helped admissions, the rates of acceptances for each group never recovered to the pre-209 years’.

Hypothesis 1:

The Prop 209 Effect x Estimate entry represented the average slope of the White population, prior to the implementation of Proposition 209. The value -0.205 means, that before the implementation of Proposition 209, the rate of admissions for the White population was already decreasing on average by 20.5%. Therefore, for the other population groups, the first half of the table represented their average slopes for rates of

admissions prior to Proposition 209, relative to the White population's average slope of -0.205 or -20.5%. Since the entry for the Filipino Estimate was 0.012, this meant that on average, the slope representing Filipino rates of admissions was 0.012 points higher than the White population's, resulting in an average slope of -0.193 or -19.3%. This was before the implementation of Proposition 209. After the interaction effect with the added implementation of Proposition 209, the average slope for the Filipino rates of admissions saw a significant negative change, going from -0.193 to -0.32. After the Proposition passed, the effect on the Filipino population rates, relative to the rates of White students were significantly negative. Therefore, my first hypothesis was correct. I had posited that relative to the rate of admissions for the White population, the Filipino population's rates of admissions would demonstrate a significantly disproportionate decrease after the implementation of Proposition 209. Prior to the implementation of Proposition 209, on average, the slope of the Filipino rate of admissions was higher than that of the White population. After the implementation, it was significantly lower, pointing to a significant relationship between their rates and the implementation of Proposition 209. The p-value of 0.000910 meant I could reject the null hypothesis, which was that there was no statistical significance between race and Proposition 209's implementation on admission rates and accept the alternate hypothesis. This p-value also meant that we would expect a relationship that is this strong 0.09% of the time, therefore there is a minimal chance that this relationship was random.

An explanation as to why this population's slope for rate of admissions dropped more than that of the White population could be that its slope was already at a long term steeper trend than the White population. That is, the slope of the Filipino population was

already headed in that direction regardless of the Proposition 209 interaction. Yet this explanation could be ruled out if one were to trace the trend of the Filipino group's and the White group's rates of admissions on both Figure 1 and 2. One could see that in the later years of the graph, around after 2005, the rates seem to go in similar patterns. Therefore, this alternative explanation does not fully explain the pattern of decrease the Filipino population experienced after the treatment effect.

Hypothesis 2:

I had also theorized that, relative to the White population's rates of admissions, the NHPI rates of admissions would significantly decrease after the implementation of Proposition 209. Looking at the NHPI p-value and Estimate values before and after the implementation, even before the implementation of Proposition 209, the average slope for NHPI rates of admissions was significantly lower than that of the White population. Prior to Proposition 209's implementation, the average slope for the rate of admissions was -30.5%, already the starting point for the NHPI population was 10% below that of the White population. Additionally, before the Proposition's implementation, the number of NHPI applicants in 1994, 1995, 1996, and 1997 were 60, 68, 72, and 67, respectively, as opposed to 8353, 8946, 9783, 11206, the number of White applicants at the time. Of the NHPI who applied, in 1994 49 of 60 were accepted (81.7%), in 1995 52 were accepted (72.5%), in 1996 53 were accepted (73.6%), and in 1997, 33 were accepted (49.3%). From those years the White population's number of admitted students were 7162 (85.7%), 7566 (84.6%), 7711 (78.9%), and 8058 (71.9%). Therefore, even before the implementation of Proposition 209, from the years studied, the Pacific Islander's rates of admissions were consistently lower than that of the White population. This is also a

visible effect shown on Figure 1. Although for my thesis, I compared rates of admitted students to enable a consistent comparison between larger and smaller populations such as these, the number of students who applied matters in the determination of said admission rates. It is logical to believe that if there is a larger number of applicants for a group, there is a wider selection of qualified students to choose from. And thus the logic follows: the larger the group is, the larger the yield of admitted students from that group is. I believe part of the reason the NHPI rates did not show significant differences was because the number of NHPI students who applied and were accepted in the pre-treatment phase were already so small, that the estimated treatment effect was not as great.

Chapter 7: Conclusion

The purpose of this thesis was to study if there was a correlation between the implementation of Proposition 209 and the AANHPI population's representation at the UC level. I wanted to see if subgroups within the AANHPI populations' rates of admissions decreased significantly after the implementation of Proposition 209. I chose specifically the Filipino and NHPI populations, after reading the available literature on the URM's representation at the UC after Proposition 209. While previous studies, literature, newspapers, and amicus curiae briefs focused on the traditional URM's when discussing Proposition 209 and race-neutral policies, there were no studies done on the relationship between Proposition 209 and my specific populations' representations at the UC. Much of the existing work on Proposition 209 listed the AANHPI group, sometimes just referring to them as the Asian American group, as the counterparts to the traditional URM's, alongside the White population. By using the aggregate Asian American group, some studies failed to acknowledge the separate existence of the Pacific Islander category and also failed to acknowledge the existing diversity within the AANHPI category as a whole. To determine whether or not my population's rates of admissions changed significantly after Proposition 209's implementation, I studied all the available races' rates of admissions with the rates of the White population as the control. I studied all of the available races' rates to see if, relative to the White population's rates, the rates of traditional URM's, the Filipino population, and NHPI populations were similarly and significantly affected. My findings supported my hypothesis on Filipino admission rates but not my second hypothesis on the NHPI admission rates. Therefore, relative to the

White populations, Filipino rates of admissions significantly changed after Proposition 209's implementation while the NHPI's did not.

Implications

The results of this study, along with the prevalence of the MMM and importance of diversity in higher education, suggest more research should be done on the diversity of specific subgroups in the AANHPI and its effects in higher education. Although my thesis mainly focuses on the Filipino and NHPI populations, I argue the lessons learned throughout could be generalized to a greater scope. In the current research on the AANHPI's representation at the UCs as presented in the Amicus Curiae Brief and by Kidder and Gandara, the AANHPI as an aggregate group are well represented. But as *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in California* (2013) mentioned, at UC Berkeley, some groups were better represented, relative to their population in the state, while others (Cambodian, Fijian, Filipino, Guamanian/Chamorro, Native Hawaiians, Hmong, Indonesian, Japanese, and Laotian) were underrepresented. My findings from my thesis added to this knowledge by analyzing the admission rates and representation of Filipino and NHPI at UC Santa Barbara. A study to this level of disaggregation for the subject had not been done before. This was due in part to the aggregation of the AANHPI in higher educational research. Aggregate AANHPI data could incorrectly support the idea that the AANHPI were universally academically and socioeconomically successful, upholding components of the MMM, a damaging stereotype to both AANHPI and traditional URM (specifically African Americans).

In addition, this data issue, disregarded the diversity of the group. It is undoubtable that within the AANHPI population, of over 23 racial categories, there exists diversity in culture, struggle, privilege and life experiences. This variability of experiences faced by subgroups within the AANHPI has the potential to add to the diversity public universities adamantly defended in *Regents v. Bakke* (1978), *Gratz v. Bollinger* (2000), *Grutter v. Bollinger* (2002), *Fisher v. University of Texas at Austin* (2013), and the Brief of the President and the Chancellors of the University of California as Amici Curiae in Support of Respondents, *Fisher v. University of Texas at Austin* (2015). Especially considering the rapid rates of growth for the AANHPI population in California, there should be a corresponding increase in knowledge and representation for this population. Yet despite the population growth as measured by decennial U.S. Census in 1990, 2000, 2010, there still exists a significant gap on the detailed knowledge of the specific AANHPI communities. Because a growth in their population in the state means a growth in their presence in higher education, public universities have an interest to not only represent the proportional growth, but also understand the population itself. The UCs showed immense progress in this area when it expanded its data collection to include detailed populations of not only AANHPI, but also all other racial categories in 2009. Although disaggregated data at this level might only seem relevant to admissions and enrollment issues at the UC-level, knowing the detailed student populations could be used for more successful targeted policy-making. In comprehensively learning about the student body's demographics, the UC, already a forerunner and champion of diversity, could continue to be a model other public universities learn from.

References

- Brief of the President and the Chancellors of the University of California as Amici Curiae in Support of Respondents, *Fisher v. University of Texas at Austin*, 570 U.S. (2015) <https://www.law.berkeley.edu/wp-content/uploads/2016/07/Proposition-209-and-PublicEmployment-Workforce-Diversity.pdf>
- Brief of the President and the Chancellors of the University of California as Amici Curiae in Support of Respondents, *Schuette v. Coalition to Defend Affirmative Action, Integration and Immigration Rights and Fight for Equality by Any Means Necessary (BAMN), Et Al.*, 570 U.S. (2014). https://www.americanbar.org/content/dam/aba/publications/supreme_court_prev_w/bries-v2/12-682_resp_p-c-uofc.authcheckdam.pdf
- California. Const. art. I, §31.
- California. Const. art. 9, §1.
- Civil Rights Act of 1964, Pub.L. 88-352, 78 Stat. 241 (1964) Equal Employment Opportunity Commission. n.d. Web. https://www.eeoc.gov/eeoc/history/35th/thelaw/civil_rights_act.html
- Exec. Order No. 11246, 3 C.F.R. 684 (1965). United States Department of Labor. n.d. Web. <https://www.dol.gov/ofccp/regs/statutes/eo11246.htm>.
- “Guidelines for Implementation of University Policy on Undergraduate.” UC Office of the President, University of California, 20 July 2012, www.ucop.edu/studentaffairs/files/GUIDELINES_FOR_IMPLEMENTATION_OF_UNIVERSITY_POLICY_on_UG_ADM_Revised_July2012.pdf.
- Jeffries, John Calvin. *Justice Lewis F. Powell, Jr* New York City: Fordham University Press, 2002. Google Books. Web. 30 March 2018.
- Jr., B. Drummond Ayres. "On Affirmative Action, Wilson's Moderate Path Veered Quickly to Right." *The New York Times*. 08 Aug. 1995. Web.
- Kim, Claire Jean. 1999. “The Racial Triangulation of Asian Americans.” *Politics and Society* 27(1): 105-138. <http://journals.sagepub.com/doi/pdf/10.1177/0032329299027001005>.
- Maramba, D. C., Museus S. D., Teranishi, R.T., (2013). *The Misrepresented Minority: New Insights on Asian Americans and Pacific Islanders and their Implications for Higher Education*. Sterling, VA: Stylus Publishing, LLC.

Organic Act of 1868, 244 Statutes of California §§ 1-26 (1867-1868)

Poon, OiYan, et al. 2016. "Count Me In!: Ethnic Data Disaggregation Advocacy, Racial Mattering, and Lessons for Racial Justice Coalitions." *Journal Committed to Social Change on Race and Ethnicity* (3): 92-124.

Regents of University of California v. Bakke, 438 U.S. 265 (1978), Cornell University Law School, n.d. Web. https://www.law.cornell.edu/supremecourt/text/438/265#writingUSSC_CR_0430265ZO

Santos, Jose L, et al. 2010 "Is 'Race-Neutral' Really Race-Neutral?: Disparate Impact Towards Underrepresented Minorities in Post-209 UC System Admissions." *The Journal of Higher Education*. 81(6): 605-631.

UC Regents' Resolutions. Text of UC Regents' Resolutions. University of California Berkeley. Web. <https://www.berkeley.edu/news/berkeleyan/1995/0830/text.html>.

U.S. Constitution. Amendment XIV, Sec. 1. Cornell University Law School. n.d. Web. <https://www.law.cornell.edu/constitution/amendmentxiv>.

Voter Information Guide for 1996, General Election (1996).
www.repository.uchastings.edu/ca_ballot_props/1139

Wallace, Amy, and Bettina Boxall, "Chancellors Say Prop. 209 Would Hurt Education." *Los Angeles Times*, 21 Oct. 1996. articles.latimes.com/1996-10-21/news/mn56217_1_higher-education.

Bibliography

- "A Brief History of Affirmative Action." OEOD. University of California Irvine, n.d. Web. 17 Mar. 2018. http://www.oood.uci.edu/policies/aa_history.php .
- Annual Accountability Sub-Report on Diversity*. Office of the President, 2012, <http://regents.universityofcalifornia.edu/regmeet/jan12/e2.pdf>.
- Antonivics, Kate and Ben Backes. 2014. "The Effect of Banning Affirmative Action on College Admission Rules and Student Quality." *Journal of Human Resources*. 49(2): 295-322. Web. http://econweb.ucsd.edu/~kantonov/admissions_writeup_probit2.pdf
- "California's Population." Public Policy Institute of California. Public Policy Institute of California, n.d. Web. <http://www.ppic.org/publication/californias-population>
- Card, David, and Alan Krueger. 2005. "Would the Elimination of Affirmative Action Affect Highly Qualified Minority Applicants? Evidence from California and Texas." *Industrial & Labor Relations Review*, 58(11)" 415-434., doi:10.3386/w10366.
- "Charles E. Young - UCLA Luskin." UCLA Luskin, University of California Los Angeles, www.bing.com/cr?IG=EC3B4CDB33F54D8BA9005F0760F6BBBA&ID=330430A2857262F02C3F3B67843D633D&rd=1&h=bXnD7Wu3pX1h55Wkgiu656Yo9FZl8mrbf1Linchrss&v=1&r=http://luskin.ucla.edu/person/charles_young/&p=DevEx,5070.1.
- Contreras, Frances E. 2005. "The Reconstruction of Merit Post-Proposition 209." *Educational Policy*, 19(2): 371-395.
- Cummins, John et al. *In Memoriam of Chang-Lin Tien*. Retrieved from. senate.universityofcalifornia.edu/files/inmemoriam/html/Chang-LinTien.htm
- Dizon, J. P. 2011. Lessons on Ethnic Data Disaggregation from the "Count Me In" Campaign. *The Vermont Collection*, 32: 21-31. <http://www.uvm.edu/~vtconn/v32/Dizon.pdf>
- Douglass, John A. "A Brief on the Events Leading to SP1." University-Wide Office of the Academic Senate, 28 Feb. 1997. Web. <https://senate.universityofcalifornia.edu/files/reports/sp1rev.pdf>.
- Fessenden, Ford, and Josh Keller. "How Minorities Have Fared in States With Affirmative Action Bans." *The New York Times*, 24 June 2013, www.nytimes.com/interactive/2013/06/24/us/affirmative-actionbans.html.

- Fisher v. University of Texas at Austin*, 570 U.S. (2013) Web. Retrieved from <https://www.oyez.org/cases/2012/11-345>
- Gittinger, Ted, and Allen Fisher. "LBJ Champions the Civil Rights Act of 1964." National Archives and Records Administration 2004. Web. www.archives.gov/publications/prologue/2004/summer/civil-rights-act-1.html
- Gratz v. Bollinger*. 539 U.S. 244 (2000). *Cornell University Law School* <https://www.law.cornell.edu/supct/html/02-516.ZO.html>
- Griggs v. Duke Power Co.* 401 U.S. 424 (1971). *Oyez*, <https://www.oyez.org/cases/1970/124>
- Grutter v. Bollinger*, 539 U.S. 309 (2002). *Cornell University Law School* <https://www.law.cornell.edu/supct/html/02-241.ZO.html>
- Gurin, Patricia, Eric Dey, Sylvia Hurtado, and Gerald Gurin. 2002. "Diversity and Higher Education: Theory and Impact on Educational Outcomes." *Harvard Educational Review* 72(3): 330-67.
- "History of Affirmative Action." *US Legal*. <https://civilrights.uslegal.com/affirmative-action/history-of-affirmative-action/>.
- Long, Mark C. 2007. "Affirmative Action and Its Alternatives in Public Universities: What Do We Know?" *Public Administration Review*. 67(2): 315-330.
- Lopez, Gustavo, et al. "Key Fact About Asian Americans, a Diverse and Growing Population." *Pew Research Center*, 8 Sept. 2017, www.pewresearch.org/facttank/2017/09/08/key-facts-about-asian-americans/.
- Lungren v. Superior Court of Sacramento*, 48 Cal. App. 4th 435 (1996). *Leagle* <https://www.leagle.com/decision/199648348calapp4th4351475>
- Office of Management and Budget (OMB) Directive No. 15 Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997), https://www.whitehouse.gov/omb/fedreg_1997standards.
- Patricia Gurin, Eric Dey, Sylvia Hurtado, and Gerald Gurin 2002. "Diversity and Higher Education: Theory and Impact on Educational Outcomes." *Harvard Educational Review*: 72(3): 330-367. <http://hepgjournals.org/doi/pdf/10.17763/haer.72.3.01151786u134n051>.
- Perez, Michael P. 2010. "Pacific Identities beyond US Racial Formations: The Case of Chamorro Ambivalence and Flux." *Social Identities: Journal for the Study of Race, Nation, and Culture*, 8(3): 457-479.

- Poon, OiYan et al. 2017. "A Critical Review of the Model Minority Myth in Selected Literature on Asian Americans and Pacific Islanders in Higher Education." *Review of Educational Research* June 2016, 86(2): 469–502.
- Ramakrishnan, Karthik, and Farah Z. Ahmad, 2014. "Education: Part of the 'State of Asian Americans and Pacific Islanders' Series." Center for American Progress, 2014 cdn.americanprogress.org/wp-content/uploads/2014/04/AAPIEducation.pdf.
- Schevitz, Tanya. "Connerly Retiring as UC Regent -- Leaves Controversial Legacy." *SFGate*, 19 Jan. 2005, www.sfgate.com/education/article/Connerly-retiring-as-UC-regent-leaves2704643.php.
- Stall, Bill, and Dan Morain. "Prop. 209 Wins, Bars Affirmative Action." *Los Angeles Times*, 6 Nov. 1996, articles.latimes.com/1996-11-06/news/mn-62738_1_affirmative-action.
- Strasser, Ryan. "Strict Scrutiny." *LII/Legal Information Institute*. Cornell University, 23 June 2016. Web. https://www.law.cornell.edu/wex/strict_scrutiny.
- Summary of Votes Cast for Offices and Measures (1996) California Secretary of State. elections.cdn.sos.ca.gov/sov/1996-general/summary-of-votes.pdf
- Supporting Underrepresented Students. (n.d). Retrieved from <http://srs.ucsd.edu/support/underrepresented.html>
- Teranishi, R., Lok, L., & Nguyen, B. (2013). *ICount: A Data Quality Movement for Asian Americans and Pacific Islanders in Higher Education* (pp. 1-43, Rep.). CA: National Commission on Asian American and Pacific Islander on Research in Education.
- "The Constitutionality of Proposition 209 as Applied." *Harvard Law Review*, 111 1998, pp. 2081–2098. *JSTOR*, JSTOR, www.jstor.org/stable/1342491.
- The State of Higher Education in California; Asian Americans, Native Hawaiians, Pacific Islanders*. The Campaign for College Opportunity. Sept. 2015. http://collegecampaign.org/wp-content/uploads/2015/09/2015-State-of-Higher-Education_AANHPI2.pdf.
- Undergraduate Access to the University of California After the Elimination of Race Conscious Policies*, Office of the President, 2003, Web. http://ucop.edu/studentaffairs/_files/aa_final2.pdf.

University of California Application. Admissions and Enrollment of California Resident Freshmen for Fall 1989 through 2013.
http://www.ucop.edu/news/factsheets/2013/flow_frosh-ca-13.pdf.

URM Definition.(n.d.). University of California San Francisco. Web. 26 March 2018.
<https://diversity.ucsf.edu/URM-definition>.

U.S. Census Bureau (2000). *The Asian Population: 2000*. Web.
<https://www.census.gov/prod/2002pubs/c2kbr01-16.pdf>.

U.S. Census Bureau (2010). *The Asian Population: 2010*. Web.
<https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf>.

U.S. Census Bureau (2010). *The Native Hawaiian and Other Pacific Islander Population:2010*. Web. <https://www.census.gov/prod/cen2010/briefs/c2010br-12.pdf>.

Walters, Dan. "California will see slow population growth, big Latino gains." *The Sacramento Bee*, 11 March 2015.
<http://www.sacbee.com/news/politicsgovernment/capitolalert/article13521122.html>

Wikipedia Contributors. "Categories: South East Asian Countries." *Wikipedia the Free Encyclopedia*. Wikipedia, the Free Encyclopedia, 25 June. 2017. Web.
https://en.wikipedia.org/wiki/Category:Southeast_Asian_countries.

Zong, Jie, and Jeanne Batalova. "Asian Immigrants in the United States." *Migrationpolicy.org*, Migration Policy Institute, 2 Mar. 2017,
www.migrationpolicy.org/article/asianimmigrants-united-states.