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***The Salience of Racial Isolation:
African Americans' and Latinos' Perceptions of Climate and
Enrollment Choices with and without Proposition 209***

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October 2012

Forward by Gary Orfield



Foreword

Gary Orfield

One of the important arguments by critics of affirmative action is that it actually hurts the students it is supposed to help by subjecting them to the “stigma” of being admitted under policies explicitly seeking campus diversity. Such students, this theory argues, must feel embarrassed and uncomfortable as a result and would prefer to be somewhere with color blind admissions. Therefore, the critics conclude, it would be better to have more Latino and black students go to less demanding schools with no affirmative action even though those schools have lower completion rates and far less success in placing students in the best professional schools and jobs. There are numerous assumptions buried within this argument, including the assumption that we have some fair way to measure “merit” even though test score selection means ignoring the clear impact of segregated and unequal communities and schools on students’ test scores and opportunities to take strong college prep courses. Affirmative action supporters note that students admitted under diversity policies are chosen from a highly qualified pool and research shows they flourish both in college and in their professions and communities as leaders. If the critics were right, advocates of affirmative action would be unintentionally harming students of color. If they are wrong and affirmative action was rejected on that basis, those claiming to aid Latino and African American students would actually be seriously narrowing their opportunities. This paper says that they are wrong.

This paper by William Kidder analyzes two very important dimensions of this debate. The first explores extensive survey data to determine whether black students feel better on University of California campuses, where there should be no stigma after 16 years of affirmative action bans. Since all consideration of race has been forbidden for a generation by the state constitution, the stigma theory would suggest that they would feel much more comfortable on campuses under race-blind policies. The second part of the study explores the proposition that black students should be more willing to come to excellent post-stigma campuses in the nation’s leading public university system.

This study uses unique data from surveys of the University of California campuses and from their enrollment statistics and compares them to the University of Texas at Austin campus and two other selective campuses, one private and one public (whose names are kept confidential at their request). The findings show that the theory is clearly wrong.

Black students at the “stigma-free” University of California’s top campuses actually feel significantly less comfortable on campus than black students at the University of Texas, which uses affirmative action, in part, to increase the previous small representation of blacks on campus. Ironically the University of Texas operated for generations under openly

segregationist admissions policies before the civil rights revolution but now has a better racial climate than UC. The fact that Texas has produced lower levels of isolation for black students and adopted positive policies supporting diversity may well be related to these more positive outcomes.

Reading this study made me think back over my own experience in teaching classes of very widely different racial compositions in six leading universities over 45 years. I remember one class with only one black student who told me in office hours, "Professor, I feel that whenever I say anything everyone else is watching me." I didn't tell him, but he was exactly right—everyone else in the class was watching him in a way that was different from when one of the white students spoke. He was carrying the unfair burden of trying to represent an entire race. White readers should think about how they might feel being the only white student in a class that was all African American or Latino, discussing sensitive issues, like racial injustice, in history, literature, psychology or law. In contrast, I have seen truly diverse classes with a number of Latino and black students who vigorously discuss the wide range of perspectives and experiences that exist not only among racial and ethnic groups, but also within each group. Real diversity enriches education, reduces stereotypes, enables more students to know each other as individuals, and better prepares students for successful life in a diverse society. On the other hand, token diversity on campus makes things uncomfortable for the student who feels like a token, and provides very little opportunity for white students to interact with students of color, weakening the potential educational impact at both ends.

The second part of Kidder's study hits close to home for those of us who work at the University of California's leading campuses. The African American students applying to us are fully qualified to meet the standards of an intensely competitive university, which only admits the top eighth of California students. Of course, we want the very best and there are a number who are exceptionally talented. These exceptional students know, however, how isolated they would be on our campus and that becomes a clear negative. Few top African American students accept our offers of admissions, preferring to enroll in more supportive and more diverse top-ranked universities. Far from helping us recruit the best students of color, losing affirmative action and the diversity it produces has hurt us badly in this respect. The idea that the highest achieving students of color would come to the University because there is no stigma of affirmative action is factually without basis, especially given that we have lost many of these students -- who would have been powerful additions to our educational process -- to institutions that practice vigorous affirmative action. On both of these fronts, William Kidder, who is not only a researcher but also an important academic leader on the University of California's most diverse campus, presents powerful data that should be included in the national debate over the future of affirmative action. Making a decision based on demonstrably wrong assumptions would be a very costly mistake for a society training future

leaders of the predominantly non-white society we will soon become. Our destiny depends upon educating and preparing all students to thrive in diverse institutions in a society of unprecedented racial and ethnic complexity.

The Salience of Racial Isolation: African Americans' and Latinos' Perceptions of Climate and Enrollment Choices with and without Proposition 209

William C. Kidder*

October, 2012

Executive Summary

As noted by a number of social scientists, affirmative action bans create “natural experiments” that open possibilities for testing important questions of public policy related to racial/ethnic inequality in America.¹ Of the various natural experiments that emerge from the discontinuation of higher education affirmative action in several states, none matter more than California’s experience under Proposition 209, the 1996 ballot initiative that changed California’s constitution and prohibited affirmative action in state education, employment and contracting as of 1998.² This paper presents two sets of natural experiment data, the first addresses campus racial climate and the second addresses the enrollment choices of freshmen admitted to the University of California.

Part I utilizes an unusually large survey sample of 9,750 African American and Latino undergraduates at eight University of California campuses, the University of Texas at Austin and two other leading American research universities. These data for 2008-11 reveal that having an affirmative action ban (Prop 209) in conjunction with low diversity is associated with fewer African Americans and Latinos perceiving that students of their race/ethnicity are respected on

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¹ See e.g., Susan K. Brown & Charles Hirschman, *The End of Affirmative Action in Washington State and Its Impact on the Transition from High School to College*, 79 Soc. EDUC. 106 (2006); Sigal Alon & Marta Tienda, *Diversity, Opportunity, and the Shifting Meritocracy in Higher Education*, 72 AM. SOC. REV. 487 (2007).

² Cal. Const. art I. § 31. For clarification, in July 1995 the UC Regents adopted a resolution (SP-1) prohibiting affirmative action. At the undergraduate level, both Prop 209 and SP-1 took effect in 1998. SP-1 was later rescinded by the UC Regents in 2001, though more importantly, Proposition 209 remains in effect.

campus compared to campuses with affirmative action and/or higher levels of diversity. At the University of California, only 62% of African Americans feel that students of their race are respected on campus, which is significantly lower than African Americans at UT Austin (72%) and at two other peer universities (75% and 76%). When separating out each campus and survey administration of the survey, in all of nearly one hundred head-to-head comparisons, the campuses with an affirmative action ban and an African American population of only four percent or less have African American undergraduates who are *less likely* to feel respected than those at the campuses with student bodies that are five percent or more African American (some with affirmative action and some without). Similarly, the data show that at UC, 77% of Latinos feel that students of their ethnicity are respected on campus, which is significantly lower than results for Latinos at UT Austin (90%) and is also lower than Latinos at the two other peer universities (80% and 90%). The data lend support to the concept of “critical mass” while acknowledging that context matters and it is unrealistic to expect an across-the-board numerical definition of what constitutes sufficient critical mass.

The natural experiment data at these research universities also highlight that African Americans’ and Latinos’ diminished sense of feeling respected is not inevitable; under the right conditions and with robust levels of racial/ethnic diversity African Americans and Latinos feel just as respected at research universities as other students. The data in Part I reinforce the educational importance of avoiding racial isolation in the university setting, and show that this challenge is generally worsened for African Americans and Latinos at campuses with low diversity for reasons stemming from an affirmative action ban.

While Part I analyzes what students say and believe, Part II of this paper analyzes what students do as a means of testing whether Proposition 209 had either a “chilling effect” or a “warming effect” on underrepresented minorities’ enrollment choices at UC and competitor institutions. The data also address the research question of whether Black and Latino students (especially the subset who are among the top admits) actually prefer to enroll at UC campuses after Prop 209 based on their perception that they will be less subject to “racial stigma” as compared to enrolling at elite private universities with affirmative action.

For African Americans admitted to UC, a comparison of pre-209 and post-209 freshmen data reveal that after the affirmative action ban the yield rate to UC consistently declined for African Americans whether they were in the top third of UC’s admit pool (39% to 33%), the middle third of the admit pool (61% to 50%) or the bottom third of the admit pool (64% to 52%). And data from campus-level admit pools indicate a dozen instances since 1998 where there was a *zero percent* yield rate for African Americans in the top of the admit pools at UC Berkeley, UC San Diego and other campuses, an event that never happened in the four years before Prop 209. After Prop 209 the yield rate to UC also consistently declined for Latinos in the top third of

UC's admit pool (52% to 48%), the middle third of the admit pool (61% to 50%) and the bottom third of the admit pool (61% to 49%).

Conversely, post-209 data for 2001-11 within the top third of UC's admit pool reveal that 16% of whites/Asian Americans/others choose to enroll at selective private selective colleges or universities, compared to 25% for Latinos and 39% for African Americans choosing to enroll at these elite institutions that employ affirmative action. Earlier research indicates this pattern of underrepresented minorities choosing to attend private competitors instead of Berkeley, UCLA and other UC campuses became more pronounced after Prop 209 as compared to immediately before Prop 209.

The data in Part II support the "chilling effect" hypothesis and call into question other recent claims of economists who assert – without the benefit of the data on selective private universities reviewed herein – that Prop 209, by reducing stigma, brought about a mild "warming effect" in freshmen enrollment yield at UC. The data in Part I also constitutes a natural experiment that calls into question the validity of the stigma critique of affirmative action, by showing that underrepresented minority students actually feel less respected at the University of California than at peer research universities.

Part I: Campus Racial Climate, Critical Mass & Affirmative Action

A. Introduction and Summary of Related Research

Part I of this paper augments the larger literature with illuminating recent racial climate survey data at eight University of California campuses, the University of Texas at Austin – where the affirmative action program is the subject of a pending Supreme Court case – and two other leading American research universities. All eleven of these university campuses administer an identical survey to undergraduates, which allows for apples-to-apples comparisons on questions about student attitudes, including one that is an important indicator of racial climate. This survey goes by one name within UC (the University of California Undergraduate Experience Survey, or UCUES) and another name at the other institutions (Student Experience in the Research University, or SERU), but it is the same survey and it asks respondents if they believe that students of their race or ethnicity are respected on campus.³

Numerous studies confirm the importance of a healthy campus racial climate as a necessary but not sufficient means of enhancing learning and success.⁴ Students who feel respected and

³ For additional information, see Appendix A and <http://cshe.berkeley.edu/research/seru/>.

⁴ See e.g., Sylvia Hurtado et al., *Assessing the Value of Climate Assessments: Progress and Future Directions*, 1 J. DIVERSITY HIGHER EDUC., 204, 213 (2008); Patricia Gurin et al., *The Benefits of Diversity in Education for Democratic*

have a sense of belonging perform better academically, including in targeted interventions aimed at African American college students.⁵ Moreover, advanced quantitative studies show that increasing representation of students of color (structural diversity) is directly associated with a positive racial climate and other benefits like cross-racial understanding.⁶ On a broader and related level, numerous studies document the educational benefits of racially diverse learning environments in college, as summarized by Harper and Hurtado: “[S]tudents who attend racially diverse institutions and are engaged in educationally purposeful activities that involve interactions with peers from different racial/ethnic backgrounds come to enjoy cognitive, psychosocial, and interpersonal gains that are useful during and after college.”⁷

While the University of California continues to be subject to Prop 209, it is relevant here as background information that by 2001, the UC Board of Regents recognized their earlier mistake and thus rescinded their 1995 resolution banning affirmative action. The Board of Regents specifically found that the SP-1 resolution in 1995 caused some “individuals [to] perceive that the University does not welcome their enrollment at its campuses.”⁸ The research question to be explored herein is whether recent data indicate that underrepresented minorities feel less welcome and respected at UC campuses, particularly at those campuses where “critical mass” may be lacking for reasons associated with Prop 209. As explained by Nuñez in the context of Latino students, affirmative action bans can exacerbate the vulnerability of underrepresented minorities and erode the quality of their educational experiences:

Recent challenges to public universities’ affirmative action policies can send signals to Latino students that they are neither qualified nor welcome in these institutions, an effect that may be particularly strong in selective public flagship research universities.

Citizenship, 60 J. SOCIAL ISSUES 17, 32 (2004); Tara J. Yosso et al., *Critical Race Theory, Racial Microaggressions, and Campus Racial Climate*, 79 HARV. EDUC. REV. 659 (2009).

⁵ See e.g., Gregory M. Walton & Geoffrey L. Cohen, *A Brief Social-Belonging Intervention Improves Academic and Health Outcomes of Minority Students*, 331 SCIENCE 1447, 1447 (2011); Angela M. Locks et al., *Extending Notions of Campus Climate and Diversity to Students’ Transition to College*, 31 REV. HIGHER EDUC. 257, 260 (2008).

⁶ See e.g., Uma M. Jayakumar, *Can Higher Education Meet the Needs of an Increasingly Diverse and Global Society? Campus Diversity and Cross-Cultural Workforce Competencies*, 78 HARV. EDUC. REV. 615 (2008); Victor B. Saenz et al., *Factors Influencing Positive Interactions Across Race for African American, Asian American, Latino, and White College Students*, 48 RES. HIGHER EDUC. 1 (2007); Mitchell J. Chang et al., *Cross-Racial Interaction Among Undergraduates: Some Consequences, Causes, and Patterns*, 45 RES. HIGHER EDUC. 529 (2004); Gretchen E. Lopez, *Interethnic Contact, Curriculum, and Attitudes in the First Year of College*, 60 J. SOC. ISSUES 75 (2004).

⁷ Shaun R. Harper & Sylvia Hurtado, *Nine Themes in Campus Racial Climates and Implications for Institutional Transformation*, 120 NEW DIRECTIONS FOR STUDENT SERVICES, 7, 14 (2007).

⁸ University of California Regents RE-28 Resolution, May 2001, available at <http://www.universityofcalifornia.edu/regents/regmeet/may01/re28new.pdf> (emphasis added).

These policy conditions can exacerbate the negative effects of exclusionary racial/ethnic climates and stereotyping on Latino students' sense of belonging in these universities.⁹

Consistent with this hypothesis, Solorzano, Allen & Carroll's qualitative study of racial climate at UC Berkeley shortly after the implementation of Prop 209 reported evidence of students of color feeling marginalized and not respected.¹⁰ The authors found there were negative consequences in the classroom that affected learning at Berkeley for everyone because underrepresented minority students employed coping strategies (e.g., keeping silent in class¹¹) that work against the types of robust discussions and interpersonal and relationships that the Court in *Grutter* highlighted as so beneficial. Parallel to the research literature on racial isolation and students not feeling welcome are overlapping research questions about "racial stigma" and whether that is a phenomenon affected by the presence or absence of affirmative action policies (the stigma literature is summarized in Part II of this paper).

As a counterpoint to UC, UT Austin was previously under an affirmative action ban stemming from the 1996 *Hopwood* ruling,¹² which earlier research indicates also created an unwelcoming climate for underrepresented minority students.¹³ However, after the 2003 *Grutter v. Bollinger* Supreme Court ruling effectively overruled *Hopwood*, UT Austin embarked upon a lengthy self-study process to determine if race-conscious affirmative action should be included in undergraduate, graduate and professional school admissions. UT Austin initiated its limited consideration of race/ethnicity after the University conducted a systematic study of diversity in its classrooms (large and small), and also after the University found its minority undergraduate students "reported feeling isolated."¹⁴ In the pending *Fisher* Supreme Court case, UT Austin

⁹ Anne-Marie Nuñez, *A Critical Paradox? Predictors of Latino Students' Sense of Belonging in College*, 2 J. DIVERSITY IN HIGHER EDUC., 22, 23 (2009) (internal citations omitted).

¹⁰ Daniel Solorzano et al., *Keeping Race in Place: Microaggressions and Campus Racial Climate at the University of California, Berkeley*, 23 CHICANO-LATINO L. REV. 15 (2002) (employing multiple methods, including focus group interviews in the Spring of 2000).

¹¹ *Id.*

¹² For background, see e.g., University of Texas at Austin Proposal to Consider Race and Ethnicity in Admissions (June 2004); Liliana M. Garces, *The Impact of Affirmative Action Bans in Graduate Education* (July 2012), available at <http://civilrightsproject.ucla.edu/research/college-access/affirmative-action/the-impact-of-affirmative-action-bans-in-graduate-education/garces-impact-affirmative-action-graduate-2012.pdf>.

¹³ Sylvia Hurtado et al. "Time for Retreat" or Renewal? *The Impact of Hopwood on Campus*, in DONALD HELLER, ED., THE STATES AND PUBLIC HIGHER EDUCATION: AFFORDABILITY, ACCESS, AND ACCOUNTABILITY (2000).

¹⁴ *Fisher v. University of Texas at Austin*, 631 F.3d 213, 225 (5th Cir. 2011). In particular, UT Austin officials recognized that "critical mass is a necessary (but not sufficient) condition of achieving diversity" and that the University "could not accomplish its diversity goals without considering race in admissions." See *Fisher v. UT Austin* Joint Appendix 432a (B. Walker Affidavit); *id.* at 275 (Defendant's statement of facts: "Officials discovered when talking with students that minority students still felt isolated in the classroom and a majority of undergraduates believed there was no diversity in the classroom. Walker Aff. ¶ 12; Walker Dep. 21:6-12").

notes that prior to restarting affirmative action (in 2005) “there was jarring evidence of racial isolation” for underrepresented minority students on the Austin campus.¹⁵

B. Findings

With close to ten thousand African American and Latino survey respondents, the data in this paper includes an unusually large sample of underrepresented minorities relative to the general literature. For instance, this sample of African Americans and Latinos is nine times larger than Rankin & Reason’s important 2005 study of campus racial climate at ten universities and colleges,¹⁶ and it is more than twice as large as the sample in Hurtado and Ruiz’s recent report on the initial results from 32 institutions administering the Diverse Learning Environments (DLE) Survey.¹⁷

Combined, at the eight UC campuses about 3.5% of the undergraduate student body was African American, compared to 5% at the flagship UT Austin campus. Two other peer universities agreed to provide data on this same racial climate question upon condition that their institutions were not specified. Both are U.S. members of the Association of American Universities (the AAU represents the top 59 American universities and two in Canada), so they are referred to as AAU University #1 and AAU University #2. One of these is private and one is public; one is ranked somewhat higher than UT Austin in the *U.S. News* rankings and the other is somewhat lower-ranked.¹⁸ AAU University #1 is like UT Austin in two respects: (1) it has an undergraduate student body that is about 5% African American; and (2) it employs affirmative action. AAU University #2 has a somewhat higher proportion of African American students than the average at UC campuses, UT Austin and AAU #1. As additional context, all of these eleven university campuses have the same 2010 Carnegie Classification as research universities with very high research activity (“RU/VH”). The survey response rates are reasonable at all of the universities included in this analysis, and all of the available survey administrations in recent years (2008 to 2011) are included (see Appendix A for additional details).

¹⁵ Brief of Respondent on *Fisher v. University of Texas at Austin* 43 (Aug. 2012) available at <http://www.utexas.edu/vp/irla/Documents/Brief%20for%20Respondents.pdf>.

¹⁶ Susan R. Rankin & Robert D. Reason, *Differing Perceptions: How Students of Color and White Students Perceive Campus Climate for Underrepresented Groups*, 46 J. COLLEGE STUDENT DEVELOPMENT 43, 50 tbl.1 (2005).

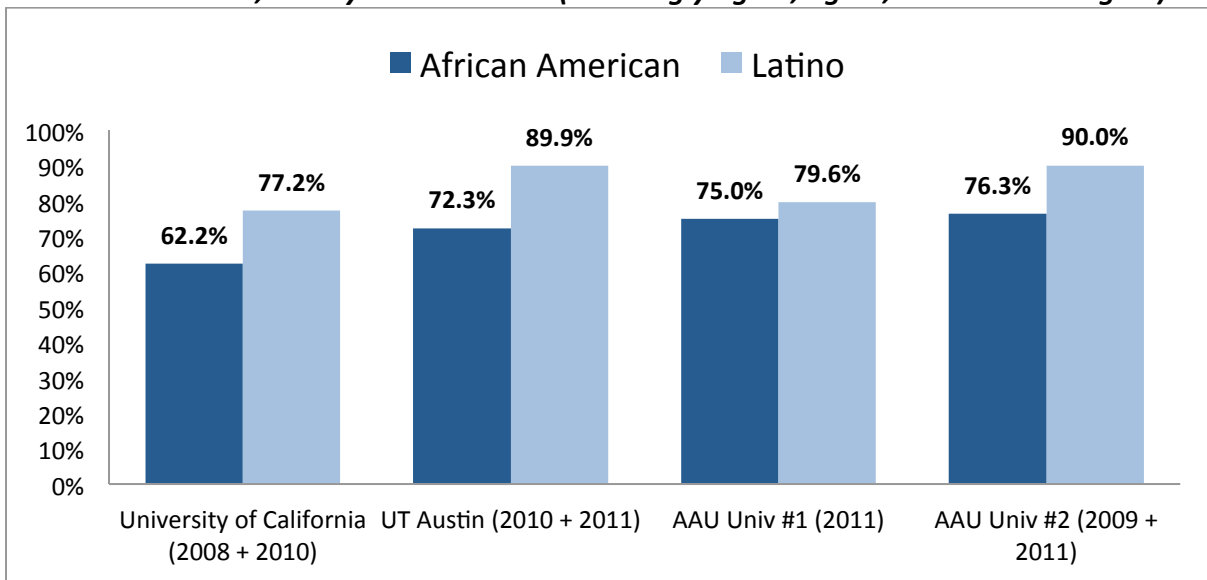
¹⁷ Sylvia Hurtado & Adriana Ruiz, *The Climate for Underrepresented Groups and Diversity on Campus* 2 n.6 (June 2012), available at <http://heri.ucla.edu/briefs/urmbriefreport.pdf>. With a sample of 490 African American and 3,488 Latino college students, Hurtado & Ruiz report statistically significant differences in underrepresented minorities’ experiences of exclusion at campuses where they are 0-20% of the student body, versus 21-35% and 36%+ of the student body. *Id.* at 2 fig. 2.

¹⁸ Because of the limited number of universities administering SERU during this period, I cannot provide much more than this in the way of descriptive information, as it would enable others to quickly deduce the identities of these two universities. See Appendix A.

The data reveal that across eight UC campuses only 62.2% of African American students in 2008-10 report feeling that students of their race are respected on campus, compared to over 92% of whites. At UT Austin in 2010-11 72.3% of African Americans reported feeling that students of their race are respected on campus. While the UT Austin data indicate a less than ideal racial climate for African Americans, the ten-point advantage over UC is nonetheless significant on both a statistical and a practical level. Across the UC campuses 77.2% of Latinos feel that students of their ethnicity are respected, compared to an impressive 89.9% at UT Austin.

AAU University #1 likewise reports higher levels of African American (75.0%) and Latino (79.6%) students feeling respected on campus. The same is true at AAU University #2, where African American (76.3%) and Latino (90.0%) students are more likely to feel respected. UT, AAU #1 and AAU #2 all edge out UC by ten to fourteen points in terms of their African American students feeling respected on campus, and all of these institutions have higher rates than UC of Latino students feeling respected.

"Students of my race/ethnicity are respected on this campus" UT Austin, UC and Two Other Peer Universities, Surveys in 2008-2011 (% strongly agree, agree, or somewhat agree)¹⁹



(Total number of respondents = 1,830 African Americans and 7,920 Latinos)

¹⁹ Regarding statistical significance (two-tailed P values), when comparing African Americans, UC versus UT Austin has a P value of 0.0196 (i.e., statistically significant); UC versus AAU #2 has a P value of less than 0.0001 (extremely statistically significant); and UC versus AAU #1 has a P value of 0.0316 (statistically significant). For Latinos, UC versus UT and UC versus AAU #2 both have P values of less than 0.0001 (both extremely statistically significant); however, the smaller gap among Latinos with UC versus AAU#1 has a P value of 0.4031 (not statistically significant). As will become clear from the next chart, in the above chart had I restricted the comparison to the seven UC campuses with low African American enrollment (removing UC Riverside), the differences between UC and UT Austin would have been a bit larger. In this sense, the chart above is a conservative test.

While it is the overall patterns in the chart above that have the highest statistical significance, a complementary point here is to look at the pattern that emerges from a much more granular set of comparisons (that individually are often not statistically significant) within the same data set. Treating each administration of a survey at each of these universities separately, the 1,830 African Americans in these surveys are distributed among 21 campus data points and a total of 98 comparisons are possible between campuses with 1.5-4% African Americans versus the campuses with 5% or more African Americans. For example, one can compare UC Berkeley in 2010 with UT Austin in 2011, UC San Diego in 2008 with UC Riverside in 2008, and so on.

**Head-to-Head Campus Comparisons: African Americans Reporting
"Students of my race/ethnicity are respected on this campus"**

	2011	2010	2009	2008
African Americans = 5%+ Enrollment	AAU #2: 82.4%	UCR: 87.1%	AAU #2: 71.9%	UCR: 80.0%
	AAU #1: 75.0%	UT Austin: 72.3%		
	UT Austin: 71.6%			
African Americans = 4% or less Enrollment		UCB: 54.9%		UCB: 56.8%
		UCD: 68.1%		UCD: 62.7%
		UCI: 62.2%		UCI: 70.6%
		UCLA: 61.6%		UCLA: 55.7%
		UCSD: 31.5%		UCSD: 66.7%
		UCSB: 53.1%		UCSB: 48.1%
		UCSC: 61.1%		UCSC: 49.2%

When comparing campuses with lower (1.5%-4%) African American enrollments and an affirmative action ban to campuses with higher African American enrollments (5%+) – some with affirmative action and some without – it is notable that in 98 out of 98 head-to-head comparisons the African Americans at the campuses where they are 5% or more of the student body report higher levels of believing that students of their race are respected. But that may not be quite as impressive as it sounds – and my goal in presenting it is much more modest than attempting to assert the existence of an ironclad threshold where the educational benefits of “critical mass” inexorably take hold.

The reason for caution is that the higher education literature indicates that campus racial climate is highly context-dependent and the percentage of underrepresented minority students occurs within a complex ecosystem on campus. Thus, it would be unrealistic to expect a completely “monotonic” relationship—where the campus comparisons would show that a rise in diversity is never associated with a decline in students feeling respected. For example, when running a set of campus comparisons for Latino students like the chart above, the campuses with higher proportions of Latino students win a strong majority of the time, but in the cases where they do not it is “high African American, modest Latino” enrollment institutions that are disproportionately contributing to the pattern, which is consistent with the literature on the

interdependent and multi-racial nature of campus climate. For example, the recent multi-institution DLE survey by UCLA's Higher Education Research Institute finds that African Americans perceive a more welcome climate where there are more Latino students, and vice versa (consistent with the current survey findings).²⁰ And a somewhat related phenomenon is that researchers find positive spillover effects whereby students of color who have greater exposure to one racial ethnic group can later have more positive attitudes about *other* racial groups in higher education.²¹

UC San Diego is a more discreet but vivid example of why a monotonic relationship between critical mass and racial climate is unrealistic. In 2008 UC San Diego had 1.5% African Americans and 66.7% of its African American students felt respected, but in 2010 the proportion of African Americans in the student body increased marginally to 1.8% but the percentage who felt respected actually plummeted to 31.5%. This pronounced drop (far greater than any shifts in survey results at the other ten university campuses in this data set) was almost certainly because UC San Diego became embroiled in a high-profile racial incident in the spring of 2010 that made African Americans feel substantially less welcome on campus.²²

C. Conclusion

Notwithstanding the complexities of racial climate and critical mass, these data from leading research universities show that higher levels of racial diversity are generally better for the campus climate faced by African American students, whereas racial isolation in combination with an affirmative action ban is associated with a more inhospitable racial climate. It is also evident in the figure above that African Americans students at UT Austin feel more respected than African Americans in all instances when compared to UC campuses without affirmative action *and* with relatively low African American enrollments.

The only UC campus where more African Americans feel that students of their race are respected than at UT Austin (or AAU #1 and #2) is UC Riverside. UC Riverside is in a different

²⁰ Hurtado & Ruiz, *supra* at 3 ("It is important to note that Black students feel more included on more diverse campuses even when they are not the predominant minority on a campus.").

²¹ Nicholas A. Bowman & Tiffany M. Griffin, *Secondary Transfer Effects of Interracial Contact: The Moderating Role of Social Status*, 18 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 35, 38 (2012) ("Black students' contact with Asians was related to improved attitudes toward Hispanics and Whites, and their interactions with Hispanics and Whites were both related to improved attitudes toward Asians. Hispanic students' interactions with Asians were associated with improved attitudes toward Blacks..."). As noted in the author's title, this finding is moderated by social status, so that the same effect is not evident for white students' perceptions of different racial groups.

²² In 2010 a set of race-related incidents affected the UCSD campus community – stemming from a flashpoint February 2010 "Compton Cookout" fraternity party held off campus that evoked a number of deeply offensive stereotypes. In 2012 UCSD reached a voluntary settlement with the U.S. Department of Education's Office for Civil Rights. See Tony Perry, *U.S. ends probe of racial bias at UC San Diego*, LOS ANGELES TIMES, April 14, 2012.

category because it has a much higher percentage of African Americans in the student body (7.8% in 2010) than the other seven UC campuses or UT Austin.²³ Thus, just as the natural experiment of comparing UC and UT Austin highlights the importance of critical mass and affirmative action, so too does the natural experiment *among* UC campuses under Prop 209 confirm the important association between critical mass and a more positive racial climate for underrepresented minority students.

Likewise, applying the identical set of comparisons for Latinos reveals that students at UT Austin feel more respected (91.4% in 2011 and 86.4% in 2010) in all instances when compared to the aforementioned seven UC campuses. Again, UC Riverside is the only distinguishable case (narrowly winning 3 of 4 comparisons with UT Austin), and Riverside is quite distinct from the pattern at UC overall since it has an undergraduate student body that was 31% Latino in 2010 and is eligible for federal grants as a Hispanic Serving Institution (HSI).

Separating out the campus-level data at UC also makes it much more difficult to dismiss the earlier differences in the first chart as simply the byproduct of UC's African Americans having different (i.e., more negative) political attitudes and sensibilities than students at research universities in other parts of the country.²⁴ Rather, the data show that critical mass matters, which is a finding buttressed by other analyses of the UCUES survey item measuring students' sense of "belonging."²⁵ While the generally more negative results for African Americans in this study are consistent with the climate literature regarding student satisfaction,²⁶ note that these campus-level UCUES data also indicate reason for optimism by showing that African Americans' sense of feeling respected on campus need not be inevitably lower than whites and other groups when the right mixture of educational conditions are achieved, a finding that is again corroborated by previous UCUES research. As SERU director Steve Chatman concluded in a

²³ As noted in Appendix A, lesser "academic mismatch" does not explain the higher sense of respect and belonging among African American and Latino students at UC Riverside; black-white gaps in average SAT scores are actually very similar at UCR and UCSD, the two campuses that represent the two ends of the spectrum in this study.

²⁴ See Appendix A for additional details.

²⁵ See Gregg Thomson, Diversity Matters: New Directions for Institutional Research on Undergraduate Racial/Ethnic and Economic Diversity 14 (May 2011), CSHE Research Paper *available at* <http://cshe.berkeley.edu/publications/docs/ROPS.Thomson.CampusClimate.5.5.11.pdf> ("Using 2006 UCUES results, Chatman examined sense of belonging ... and found that African American students report significantly lower sense of belonging (Chatman, 2008). Only at the one UC campus [Riverside] where there are notably higher proportions of African American and Chicano students is this not the case. Analysis of more recent (2008 and 2010) UCUES results replicates and extends these findings (Thomson & Alexander, 2011)."). The last reference is to an unpublished conference paper: Gregg Thomson & Sereeta Alexander, SERU and Campus Climate Research: An Introduction (2011), paper presented at the Fifth Annual UCUES/SERU Research Symposium, University of North Carolina, Raleigh, NC.

²⁶ Harper & Hurtado, *supra* at 17 (summarizing Solorzano et al.'s multi-campus qualitative study: "At every university, Black students expressed the highest degrees of dissatisfaction with the social environment.")

study of the 2006 UCUES results (note that “FB” is an anonymous designation; other contextual information indicates this must be UC Riverside):

The most pervasive problem found was lower ratings of belonging by African Americans overall and a couple of campuses where the ratings by African Americans were much lower. However, even among the consistently low ratings by African Americans there was one campus where ratings were actually higher than the campus average, FB... African American students at FB rated belonging as high as the UC average and higher than the overall student body at FB.²⁷

On a broader level, the comparative data confirm one aspect of the mission-driven educational benefits that research universities with affirmative action like UT Austin and AAU #1 seek to achieve and the educational harms such institutions seek to avoid (harms evident by virtue of the Prop 209 “natural experiment” at UC Berkeley, UCLA, UC San Diego and other campuses).

Part II: Student Enrollment Choices Before and After Proposition 209

A. Introduction and Summary of Related Research

Part I of this paper focused on a certain kind of natural experiment, comparing student survey responses at a set of peer research universities where the proportions of African Americans and Latinos in the undergraduate student body varied considerably and where some institutions were under an affirmative action ban and others were not. Part II now analyzes a different kind of natural experiment that was not possible with the aforementioned UCUES/SERU survey data²⁸ and is responsive to the following questions: Did underrepresented minority students who were admitted to the University of California make appreciably different enrollment choices before and after Prop 209? Did the fact that affirmative action was no longer permissible make UC more or less attractive to these students? Did Prop 209 make selective private colleges and universities (with affirmative action) more or less attractive?

Social scientists have long recognized that higher education admissions is dynamic rather than static, and a key reason for this dynamism is the interface between institutional characteristics

²⁷ Steve Chatman, *Does Diversity Matter in the Education Process?: An Exploration of Student Interactions by Wealth, Religion, Politics, Race, Ethnicity and Immigrant Status at the University of California* 30 (March 2008), CSHE Research Paper available at <http://cshe.berkeley.edu/publications/docs/ROPS.Chatman.Exploring.3.5.08.pdf>.

²⁸ UCUES was first administered within UC about five years after Prop 209 took effect, and only years after that were other universities added through SERU.

(or perceived characteristics) and student choice.²⁹ Relatedly, several scholars find that affirmative action bans dampened underrepresented minority student applications (Long, Brown & Hirschman, Dickson), while Card and Krueger found application patterns to be unchanged.³⁰ In Texas, university officials described the 1996 *Hopwood* ruling as inducing a “chilling effect” at flagship universities that “severely undermined these universities’ efforts to create diverse multiracial campuses.”³¹ In California, focus group research done by the UC Office of the President shortly after the UC Regents 1995 resolution banning affirmative action (later rescinded in 2001) was consistent with a chilling effect.³²

Here the focus is on the choices students make about where to enroll once admission offers have been made, since this arguably represents a more concrete and consequential moment of decision. Relatedly, the primary focus in this section is on yield rates to the *UC system* and the group of competitor selective private institutions rather than yield rates to specific campuses (see Appendix B for further explanation). As noted by Holzer and Neumark, focusing on changes in pre/post- affirmative action admission rates at individual campuses may overstate things somewhat because these campuses are “chasing the same minority students, each of whom can ultimately enroll at only one college or university.”³³ By 2007 the freshmen

²⁹ See e.g., ROBERT KLITGAARD, CHOOSING ELITES 78 (1985); Robert T. Teranishi et al., *The College-Choice Process for Asian Pacific Americans: Ethnicity and Socio-Economic Class in Context*, 27 REV. HIGHER EDUC. 527 (2004).

³⁰ Mark C. Long, *College Applications and the Effect of Affirmative Action*, 121 J. ECONOMETRICS 319, 325 (2004); Brown & Hirschman, *supra*; Lisa M. Dickson, *Does Ending Affirmative Action in College Admissions Lower the Percent of Minority Students Applying to College?*, 25 ECON. EDUC. REV. 109 (2006); David Card & Alan B. Krueger, *Would the Elimination of Affirmative Action Affect Highly Qualified Minority Applicants? Evidence from California and Texas*, 58 INDUSTRIAL & LABOR RELATIONS REV. 416 (2005). Note that the studies by Card & Krueger and by Long, though well-done, may be constrained by the fact that the authors were using SAT score sending data as a proxy for applications rather than directly measuring application behavior. For an earlier assessment, see Jerome Karabel, *No Alternative: The Effects of Color-Blind Admissions in California*, in GARY ORFIELD & EDWARD MILLER EDS., CHILLING ADMISSIONS: THE AFFIRMATIVE ACTION CRISIS AND THE SEARCH FOR ALTERNATIVES 33 (1998).

³¹ Susanna Finnel, *The Hopwood Chill: How the Court Derailed Diversity Efforts at Texas A&M*, in GARY ORFIELD & EDWARD MILLER EDS. CHILLING ADMISSIONS: THE AFFIRMATIVE ACTION CRISIS AND THE SEARCH FOR ALTERNATIVES 71 (1998). See also Lisa M. Dickson, *Does ending affirmative action in college admissions lower the percent of minority students applying to college?*, 25 ECON. EDUC. REV. 109 (2006) (documenting the drop immediately after *Hopwood* in African American and Latino college applications in Texas).

³² Saul Geiser et al., Admissions Briefing Paper: Underrepresented Minority Admissions at UC after SP-1 and Proposition 209: Trends, Issues and Options 9 (Nov. 2000), available at <http://www.ucop.edu/sas/researchandplanning/admbriefpaper.pdf> (“In addition, focus-group research undertaken by the Outreach Task Force following SP-1 suggests that much of the decline in underrepresented minority applications after 1995 also reflected the perception, discussed widely in press accounts, that UC had become less welcoming to minorities. Although SP-1 did not officially take effect until the Fall 1998 undergraduate admissions cycle, the passage of SP-1 in 1995 marked the beginning of a four-year downward trend in underrepresented minority applications to UC, bottoming out at 18.7% in 1999.”).

³³ Harry Holzer & David Neumark, *Assessing Affirmative Action*, 38 J. ECON. LITERATURE 483, 509 (2000).

applicants who ended up enrolling at UC applied to an average of 4.3 UC campuses (and presumably to several institutions outside UC), and the trend in the number of applications per applicant has been rising gradually since the 1990s.³⁴ UC campus-level yield rate trends are not excluded, but are reported in this paper as a supplement to the systemwide data.

This section focuses attention on enrollment choices among those who were offered admission to UC. While the entire pool is analyzed, an area of specific attention and interest are those in the top one-third of UC's admit pool, because this is the subset of admitted students with the strongest credentials and the most and best enrollment choices inside UC and at competitor institutions such as elite private universities. These data are responsive to the scholarly debate about Prop 209 and "chilling effects" versus "warming effects," which is framed by Antonovics & Sander (one of whom is a leading critic of affirmative action policies) in a recent paper as follows:

[A]rguments for chilling effects played a prominent role in the debate over Prop 209. The idea that Prop 209 could have had an opposite "warming effect" was never advanced in the public debate, to our knowledge ... A black candidate deciding between Berkeley and Stanford, for example, might conclude after Prop 209 that the signaling value of a degree from Berkeley, where there is little or no suspicion of racial preferences in admission, is greater than the signaling value of a degree from Stanford, where the suspicion of racial preferences in admissions is substantially higher. Thus, while the policy debated has focused on the chilling effects of affirmative action bans, warming effects are plausible as well.³⁵

Assessing yield rates and affirmative action bans is potentially trickier than either application or enrollment patterns. For example, Mark Long posits that underrepresented minority yield rates might in theory go up after affirmative action bans for the simple reason that these students could have fewer admission offers to choose from, and he reports that, in fact, initial studies showed a mixture of declines and increases in yield rates at selective universities after the elimination of affirmative action.³⁶ Note that to the extent universities increased recruitment

³⁴ UC Undergraduate Work Team of the Study Group on University Diversity – Recommendations and Findings 36 (2007), available at http://diversity.universityofcalifornia.edu/documents/07-diversity_report.pdf.

³⁵ Kate Antonovics & Richard Sander, Affirmative Action Bans and the "Chilling Effect" (June 2012 version), forthcoming in AM. LAW & ECON. REV. available at http://weber.ucsd.edu/~kantonov/chilling_effect_2012_06_18.pdf. Antonovics & Sander frame their findings around the "signaling value" of Prop 209, but the opposite conclusion (i.e., that it is astute to accept an offer from Stanford, regardless of affirmative action) can also be explained as a manifestation of the signaling theory of higher education admissions, so it is not the signaling theory per se but its specific application to post-209 UC admissions that I dispute.

³⁶ Mark C. Long, *Affirmative Action and Its Alternatives in Public Universities: What Do We Know?*, PUB. ADMIN. REV., March/April 2007, at 315, 318. One can also imagine the converse hypothetical situation, where restarting affirmative action could lead to a decrease in yield rates for students who enjoy an increase in admission offers to choose from.

efforts to minority students in the wake of affirmative action bans (data suggest this was the case at UT Austin, including targeted scholarships³⁷) that is a confounding factor that is difficult to parse from the data and would operate as a tailwind for the “warming effect” hypothesis and a headwind for the chilling effect hypothesis.³⁸ Additional data discussed in the appendix indicates there was a marked increase in UC’s commitment to K-12 academic preparation programs beginning in the first few years after Prop 209—and I argue that too is a confounder that functions as a headwind for the “chilling effect” hypothesis (see Appendix B). The same goes for UC’s decline in tuition costs in the first few years after Prop 209 (Appendix B).

In the pending Supreme Court case of *Fisher v. UT Austin* one recent friend-of-the-court brief claimed that the “best available evidence” indicates that Prop 209 brought about a warming effect making UC “more desirable” for underrepresented minorities, citing the paper by Antonovics & Sander.³⁹ However, consistent with the chilling effect hypothesis, other researchers like Teranishi, Briscoe and Freeman have found using qualitative methods that there can be an “intimidation factor” that African American prospective freshmen are often mindful of when they see perceive that a college campus lacks critical mass and other signals of potential for belonging.⁴⁰ On a conceptual level, arguments about “chilling effects” and “intimidation factors” in choosing where to apply and enroll can be situated within the literature documenting that students’ college application and enrollment choices are often strongly shaped by social class and related manifestations of differences in opportunity such as the college-going traditions at one’s high school.⁴¹

³⁷ Analysis indicates that a key factor in yield rates to UT Austin is not simply the Ten Percent Plan, but intensive recruitment and scholarship efforts like the Longhorn Scholarship Program. See Rodney J. Andrews et al., *Estimating the responsiveness of college applications to the likelihood of acceptance and financial assistance: Evidence from Texas*, 29 ECON. EDUC. REV. 104 (2010); Thurston Domina, *Higher Education Policy as Secondary School Reform: Texas Public High Schools After Hopwood*, 29 EDUC. EVALUATION & POLICY 200 (2007).

³⁸ Cf., Card & Krueger, *supra* at 422 n.10.

³⁹ *Fisher* Brief of Amici Curiae of Richard Sander & Stuart Taylor Jr. 28 (May 20120 (“And the court below suggested that minorities were discouraged from attending UT after it implemented *Hopwood*. But the best available evidence suggests that this is a myth, and that, on the contrary, bans on racial preferences seem to produce a “warming effect,” making the affected institutions more desirable — not less — to prospective black and Hispanic students.”).

⁴⁰ Robert T. Teranishi & Kamilah Briscoe, *Contextualizing Race: African American College Choice in an Evolving Affirmative Action Era*, 77 J. NEGRO EDUC. 15 (2008); Kassie Freeman, *Increasing African Americans’ Participation in Higher Education: African American High School Students’ Perspectives*, 68 J. HIGHER EDUC. 523 (1997).

⁴¹ See e.g., Sunny Xinchun Niu & Marta Tienda, *Choosing Colleges: Identifying and Modeling Choice Sets*, 37 SOC. SCI. RESEARCH 416 (2008); PATRICIA M. McDONOUGH, CHOOSING COLLEGES: HOW SOCIAL CLASS AND SCHOOLS STRUCTURE OPPORTUNITY (1997); Eric Grodsky & Catherine Riegle-Crumb, [Those Who Choose and Those Who Don't: Social Background and College Orientation](#), 627 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 14 (2010).

The above quote from Antonovics & Sander is also a point of entry into the related debate in academia and beyond about the potential connection between “stigma” and affirmative action. For instance, Supreme Court Justice Clarence Thomas has long argued that affirmative action programs “stamp minorities with a badge of inferiority,”⁴² and his impassioned opinion in *Grutter* about stigma invites examination by social scientists.⁴³ Similarly, former UC Regent Ward Connerly, who led the Prop 209 campaign, argues that stigmatic harm of affirmative action is a major issue,⁴⁴ and a number of other critics of affirmative action decry the notion that affirmative action “robs” the most accomplished minority students of the pride of accomplishment and other benefits of being admitted under race-blind criteria.⁴⁵ On the other hand, psychologists studying stigma consciousness on campus (which can affect both faculty and students) tend to find that being part of a tiny minority – or even worse, having solo status as the only minority in an academic department—heightens minorities’ sense of being stigmatized in the university setting.⁴⁶

In recent years sociolegal researchers have attempted to engage with these claims by Justice Thomas et al. utilizing “natural experiment” approaches quite similar to the survey data reviewed in Part I of this paper. Onwuachi-Willig, Houh and Campbell analyzed law student responses to a survey intended to probe stigma-related issues at seven leading law schools.⁴⁷ They found no statistically significant differences with respect to students of color at the four law schools that admitted students with affirmative action versus the three law schools

⁴² *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 241 (1995) (Thomas, J., concurring).

⁴³ andré douglas pond cummings, *The Associated Dangers of “Brilliant Disguises,” Color-Blind Constitutionalism, and Postracial Rhetoric*, 85 INDIANA L.J. 1277, 1283 (2010) (“In *Grutter*, Justice Thomas almost invites social scientists to test his stigma theory, so confident was he in the result that because *he* feels stigmatized and because *he* feels a badge of inferiority attached to him by his white peers, that all students of color are similarly stigmatized.”).

⁴⁴ Charles Michael Byrd, *Interview with Ward Connerly*, INTERRACIAL VOICE, April 1999 (“When I go to college campuses, I hear a lot of students say, ‘You know, you’re right. Every day that I walk into class I have this feeling that people are wondering whether I’m there because I got in through affirmative action.’ The reality is that the stigma exists. It exists, and they know it exists.”).

⁴⁵ JOHN MCWHORTER, LOSING THE RACE: SELF-SABOTAGE IN BLACK AMERICA 248 (2000); Marie Gryphon, *The Affirmative Action Myth*, 540 POL’Y ANALYSIS, April 6th 2005, Cato Institute monograph available at <http://www.cato.org/pubs/pas/pa540.pdf>.

⁴⁶ John F. Dovidio et al., *Racial, Ethnic, and Cultural Differences in Responding to Distinctiveness and Discrimination on Campus: Stigma and Common Group Identity*, 57 J. SOCIAL ISSUES 167, 169 (2001); Mischa Thompson & Denise Sekaquaptewa, *When Being Different is Detrimental: Solo Status and the Performance of Women and Racial Minorities*, 2 ANALYSES SOC. ISSUES & PUB. POL’Y 183 (2002).

⁴⁷ Angela Onwuachi-Willig et al., *Cracking the Egg: Which Came First - Stigma or Affirmative Action?*, 96 CALIF. L. REV. 1301, 1306 (2008) (surveying law students at UC Berkeley, UC Davis, Cincinnati, Iowa, Michigan, Virginia, and Washington). This study was limited by the modest number of underrepresented minority students in the surveyed law schools.

prohibited from using affirmative action (including two under Prop 209).⁴⁸ While a somewhat larger sample of underrepresented minority students surveyed at a leading recruitment conference for biomedical graduate school programs, Deirdre Bowen found that 74% of the underrepresented minority students from four states with affirmative action bans felt “pressure to prove themselves academically because of race” compared to a significantly lower 41% for the underrepresented minority students from nearly two dozen states with affirmative action.⁴⁹ One study found that stigma consciousness was negatively associated with academic performance among a sample of pre-209 UCLA students⁵⁰ – but this study was unable to address the key natural experiment question emphasized herein, which is whether there was any meaningful residual effect (in one direction or the other) compared to e.g., similar students who enrolled at UCLA after Prop 209. Moreover, that study by Sidanius et al. also found that stereotype threat vulnerability was a moderating variable of stigma.⁵¹ And outside higher education, other researchers have found that in the real world of employment the negative stigma of being an affirmative action beneficiary is often not really consequential.⁵²

The data in Part I of this paper should also be regarded as addressing the question of stigma and affirmative action, showing that among a large sample of nearly ten thousand African American and Latino undergraduates at leading research universities, those at seven University of California campuses with low critical mass (and under Prop 209) were more likely to feel that students of their race/ethnicity are *not* respected on campus than was the case at other peer universities with affirmative action and/or greater critical mass. While the data in Part II do not get at the issue of stigma with the laser precision of well-designed survey questions, the data satisfy an important axiom in social science that it is vital to study not only what people say but also *what they do*.⁵³ In this sense, the enrollment choice data in this paper have a dimension of

⁴⁸ *Id.* at 1330-31, 1343. The authors also found no statistically significant differences in what is known as “external stigma,” which refers to how other students perceive the same students of color.

⁴⁹ Deirdre M. Bowen, *Brilliant Disguise: An Empirical Analysis of a Social Experiment Banning Affirmative Action*, 85 INDIANA L.J. 1197, 1223-24 (2010).

⁵⁰ JIM SIDANIUS ET AL., THE DIVERSITY CHALLENGE: SOCIAL IDENTITY AND INTERGROUP RELATIONS ON THE COLLEGE CAMPUS 287-88 (2008).

⁵¹ *Id.*

⁵² Faye J. Crosby, *Affirmative Action: Psychological Data and the Policy Debates*, 58 AM. PSYCHOL. 93, 106 (2003) (“Thus, under certain conditions, members of disadvantaged groups may be immune to the stigma attached to being considered an affirmative action recipient...In everyday work situations outside the laboratory, where people learn much more about their own competence and the competence of others than in laboratory settings, the affirmative action label seems not to produce the negative effects that have been found under certain laboratory conditions... Similarly, large-scale surveys have shown that the direct beneficiaries of affirmative action do not seem to feel undermined by the policy”).

⁵³ See e.g., Roger Waldinger, *The Bounded Community: Turning Foreigners into Americans in Twenty-first Century L.A.*, 30 ETHNIC & RACIAL STUDIES 341, 367 (2007) (“[I]t goes without saying that survey research has its limitations:

external validity that one cannot hope to muster in psychology laboratory studies that assign students of color to different hypothetical affirmative action programs in order to measure their attitudes vis-à-vis stigma.⁵⁴

B. Findings

The data tables that follow err on the side of comprehensiveness; where possible I report the pre-209 period of 1994-97 and the post-209 period of 1998-2011. However, trends that become manifest over a dozen years after the affirmative action ban can be arguably more difficult to connect with Proposition 209 under the “natural experiment” framework (e.g., this is true with respect to the 2010-11 decline in underrepresented minority yield rates at elite privates—likely a lingering effect of the challenging economy and high unemployment in California since the 2008-09 recession). Since many studies of Prop 209 have focused more intensely on a few years before and after Prop 209, I include such tables (1994-97 versus 1998-2001) in Appendix B. The two analytical approaches yield consistent results. For ease of reference, black downward arrows are included in the charts and tables to indicate a post-209 decline and red upward arrows to indicate a post-209 increase (readers may find this more helpful in soaking-in the big picture regarding the detailed tables in Appendix B).

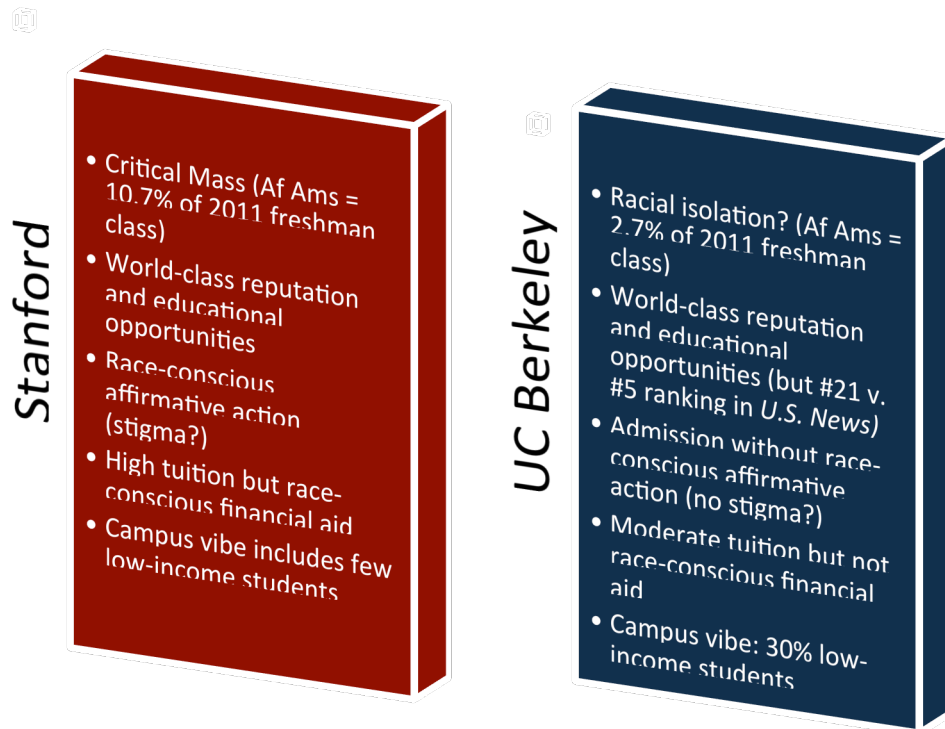
The review of the data begins with African Americans and Latinos and will later expand to complementary data on underrepresented minorities combined. The “Door #1 or Door #2?” graphic below highlights some of the potential judgments and factors that a highly accomplished African American high school graduate might informally consider in the paradigmatic example of weighing admission offers from Stanford and UC Berkeley. Choosing between admission offers from USC and UCLA – ranked #23 and #25 in this year’s *U.S. News* – is likewise a good example relevant to questions of whether stigma avoidance is a salient motivator when stacked up against the other concerns and considerations that can influence enrollment choice.

one wants to know, not just what people say, but what they do, though one would have to endorse a very strong view of the mind/body split to insist that what people say is of no value at all.”). Waldinger’s last point is important regarding those in the affirmative action debate who attempt to dismiss survey data out of hand without empirical foundation.

⁵⁴ Cf. Jerel E. Slaughter et al., *Black Applicants’ Reactions to Affirmative Action Plans: Influence of Perceived Procedural Fairness, Anticipated Stigmatization, and Anticipated Remediation of Previous Injustice*, 35 J. APPLIED SOCIAL PSYCHOL. 2437 (2006).

Door #1 or Door #2?

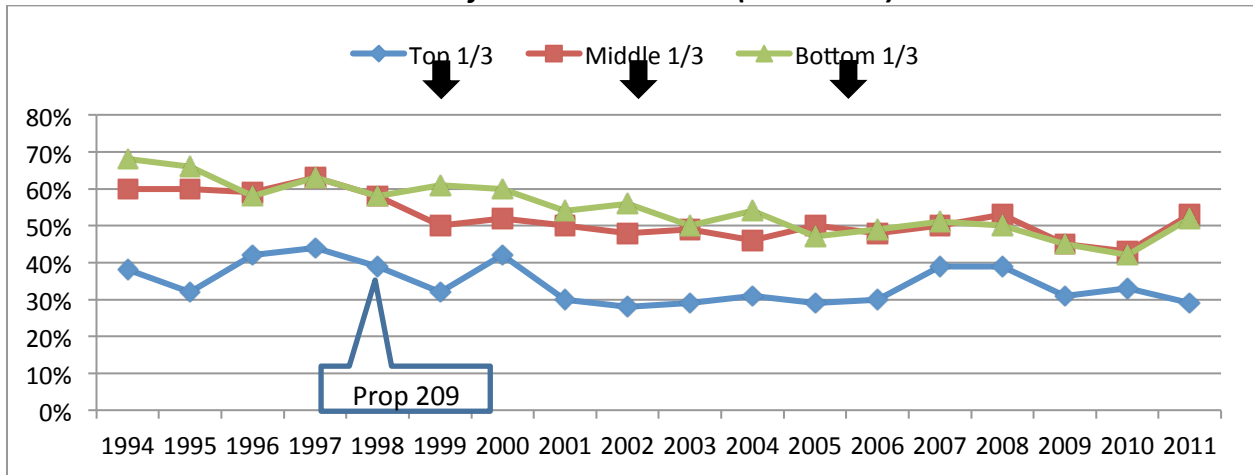
Stylized Choice Set for a High-Achieving African American Student Weighing Admission Offers



Yield rate data for UC reveals that in the four years prior to Prop 209 (1994-97) an average of 39.0% of African Americans in the top third of UC's admit pool chose to enroll at UC, whereas in the fourteen years since Prop 209 (1998-2011) the yield rate declined to an average of 32.9% for African American admits in the top third of the pool.⁵⁵ For African Americans in the middle third of UC's admit pool the corresponding yield rate averaged 60.5% in the years before Prop 209 but declined to 49.6% in the years after Prop 209. And for African Americans in the bottom third of UC's admit pool the corresponding yield rate averaged 63.8% in the years before Prop 209 but declined to an average of 52.1% in the years after Prop 209. Thus, as shown in the chart below, within all segments of UC's admit pool African Americans were less likely to choose to enroll at the University of California in the years after Prop 209 (though the data are more "choppy" in the top third of the pool due to the smaller numbers of African Americans).

⁵⁵ These data were provided by the UC Office of the President's institutional research unit, but are very consistent to what researchers will find if generating their own appropriate custom tables on the UC Statfinder data query: <http://statfinder.ucop.edu/statfinder/default.aspx>. The Statfinder totals will only differ slightly due to the inclusion of missing values when estimating the academic index. For ease of reference in relation to the two charts, the percentages in the text and Appendix tables refer to unweighted averages.

Freshmen Yield Rates to UC for African Americans, by Top/Middle/Bottom Thirds of the UC Admit Pool (1994-2011)

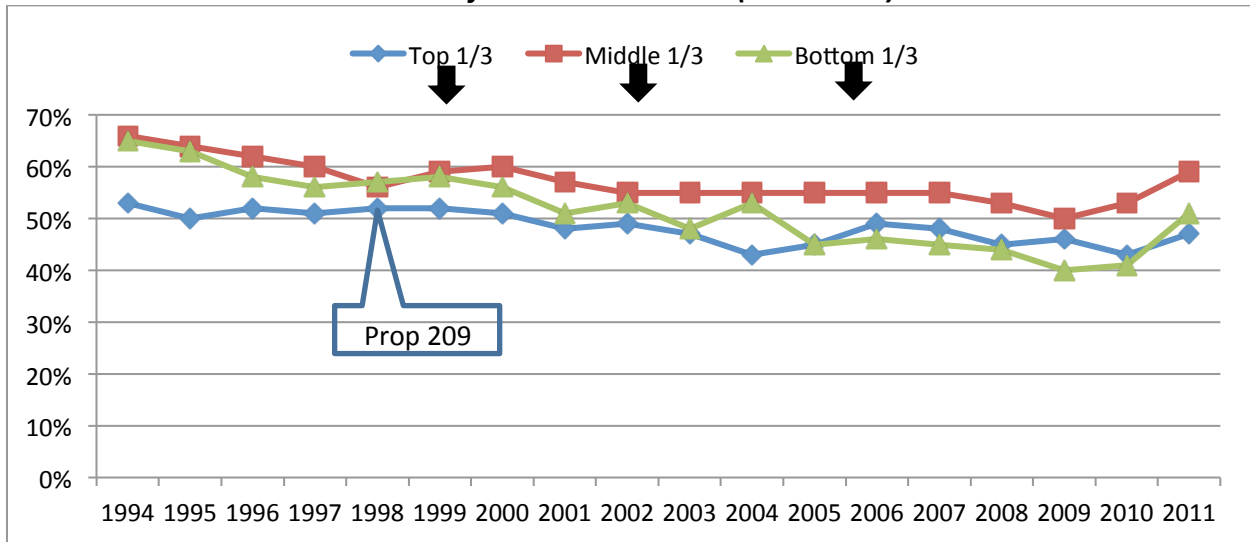


No. of African American UC Admits (including non-enrolled): Top 1/3=4,207; Mid 1/3= 8,916; Bot 1/3=20,249

These are descriptive statistics rather than a causal model, so one should not rule out alternative explanations for the trends reflected in the charts above and below (e.g., the very recent uptick in 2010-11 with African American and Latino yield rates to UC and commensurate drop in their yield rates to elite privates -- noted later -- could be related to the continued effects of the sluggish economy and housing mortgage crisis in California). Nonetheless, the data overall cast doubt on claims that after Prop 209 African American admits were more likely to choose to enroll at UC because they were attracted by the prospect of being unburdened by the stigma of affirmative action.

For Latinos, as indicated in the chart below, UC yield rate data indicate that Latinos in the top third of the UC admit pool had an average yield rate of 51.5% in the four years prior to Prop 209, and this held steady for three years under Prop 209, but became consistently lower starting in 2001, so the overall post-209 yield rate (1998 to 2011) declined to an average of 47.5%. In the middle third of the UC admit pool, the Latino yield rate to UC was 63.0% prior to Prop 209 (1994-97) and dropped to an average yield rate of 55.5% in the years since Prop 209. Finally, in the bottom third of the admit pool (relevant, but less so to the question of “stigma”) the Latino yield rate was 60.5% in the years before Prop 209, which declined to an average of 49.1% in the fourteen years since Prop 209. Thus, once again within all segments of UC’s admit pool Latinos were less likely to choose to enroll at the University of California in the many years after Prop 209 took effect.

Freshmen Yield Rates to UC for Latinos, by Top/Middle/Bottom Thirds of the UC Admit Pool (1994-2011)



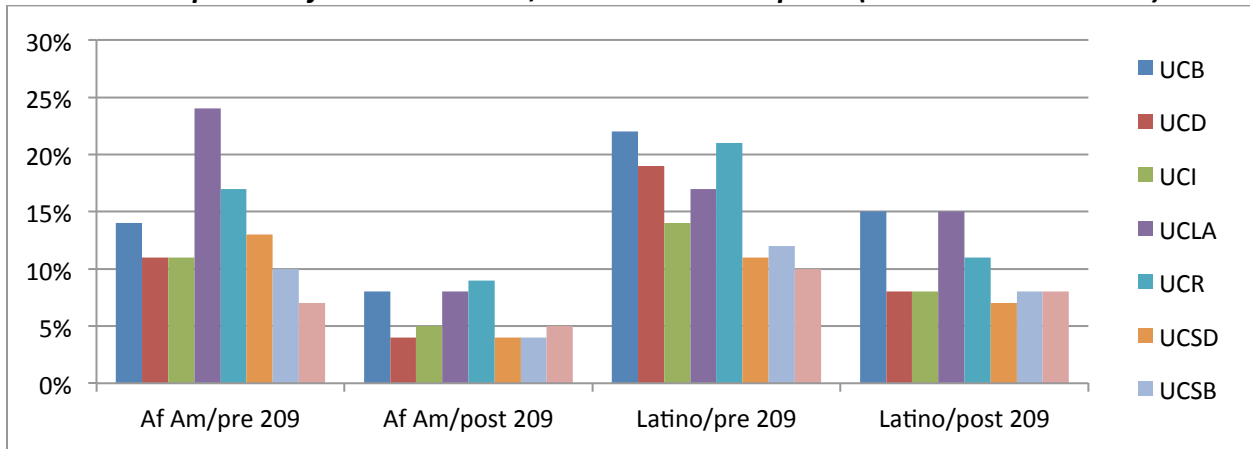
No. of Latino UC Admits (including non-enrolled): Top 1/3=26,288; Mid 1/3= 52,308; Bot 1/3=80,828

While the above charts show that African Americans’ and Latinos’ yield rates to UC dropped in the top third of the admit pool post-209, for White/Asian American/Other admits in the top third of the pool the yield rate increased slightly (57% to 58%) after Prop 209. In the middle third of the admit pool the White/Asian American/Other yield rate declined (63% to 57%), but it was less than the decline for African Americans or Latinos. It is only in the bottom third of the pool where the decline for White/Asian American/Other admits is on par with the declines for African Americans and Latinos, but this is the part of the UC admit pool that is least relevant to the policy debate about Prop 209, stigma and affirmative action (a more detailed explanation is provided in Appendix B).

The same data on the campus level (where the samples are individually much smaller) indicate that at all eight UC campuses analyzed, African Americans and Latinos in the top third of UC campus admit pools consistently had higher average yield rates in the years before Prop 209 (1994-97) than in the years since (1998-2011). The most pronounced case is African Americans at UCLA, where the yield rate in the top third of UCLA’s admit pool dropped by two-thirds (from 24% to 8%). Moreover, there were thirteen times in the post-209 years when there was a *zero percent* yield rate for African Americans in the top third of the admit pools at UC Berkeley (3 times), UC Davis (twice), UC San Diego (five times), UC Santa Barbara (twice), and UC Santa Cruz (once)—which was simply unheard of at any UC campus in 1994-97.⁵⁶

⁵⁶ Stated differently, there was a zero percent yield rate for African Americans in the top third of UC campus admit pools in 0 of 28 instances in 1994-97, versus 13 of 98 instances in 1998-2011.

Average Freshmen Yield Rates at Eight UC Campuses for African Americans and Latinos in the Top Third of UC Admit Pools, Pre- and Post-Prop 209 (1994-97 v. 1998-2011)⁵⁷



UC campus yield rates for White/Asian Americans/Others held steady at Berkeley and UCLA, and declined at other UC campuses, so overall the drop in campus yield rates was not nearly as large for others as it was in the chart above for African Americans and Latinos.⁵⁸

While equivalent longitudinal data stretching back to the pre-209 era are not available from the UC Office of the President specifically for African American admits to UC *who decided to enroll at selective private universities*, such data are available for 2001-11 by virtue of UC's participation in the National Student Clearinghouse (which, for clarification is not identical to the UC data source used above, though the same larger patterns are consistent in both data sources).⁵⁹ These data for the top third of the UC admit pool (see chart below) reveal that African Americans are typically over twice as likely as UC admits overall (39% average versus 16% for whites/Asian Americans/others) to attend a private selective college or university, and Latinos (25%) are also more likely to enroll at private selective institutions. Undoubtedly, this partly reflects the fact that proportionately more of these African American students are being offered admission to schools like Stanford, but it is still of considerable policy significance that this group of the most accomplished African Americans admitted to UC chose instead, by a

⁵⁷ The chart displays unweighted averages. For reasons of comprehensiveness, all post-209 years are included, but the four years pre- and post-209 (1994-97 v. 1998-2001) are included in Appendix B and show a similar pattern.

⁵⁸ Comparing 1994-97 with 1998-2001, the data for Whites/Asian Americans/Others were as follows: UCB (32% v. 32%), UCD (16% v. 9%), UCI (12% v. 8%), UCLA (21% v. 21%), UCR (15% v. 8%), UCSD (13% v. 9%), UCSB (13% v. 9%), and UCSC (14% v. 9%).

⁵⁹ The UCOP data referenced earlier and the National Student Clearinghouse data both cover freshmen who are California residents. The differences, when boiled down to *who actually enrolls at UC*, are modest. In the UCOP data there were 839 African Americans who enrolled at UC in 2005, whereas there were 875 as reported in Wilbur's chapter using Clearinghouse data, *supra* at 72, and a portion of the difference may be due to my rounding. The National Student Clearinghouse data allows for tracking of UC's admits who enrolled elsewhere, including selective private universities, CSU, etc.

wide margin relative to other students, to attend precisely the elite private universities that Antonovics and Sander describe as having a much greater likelihood of supposedly burdening these students with the “suspicion” of affirmative action and attendant stigmatic harm.

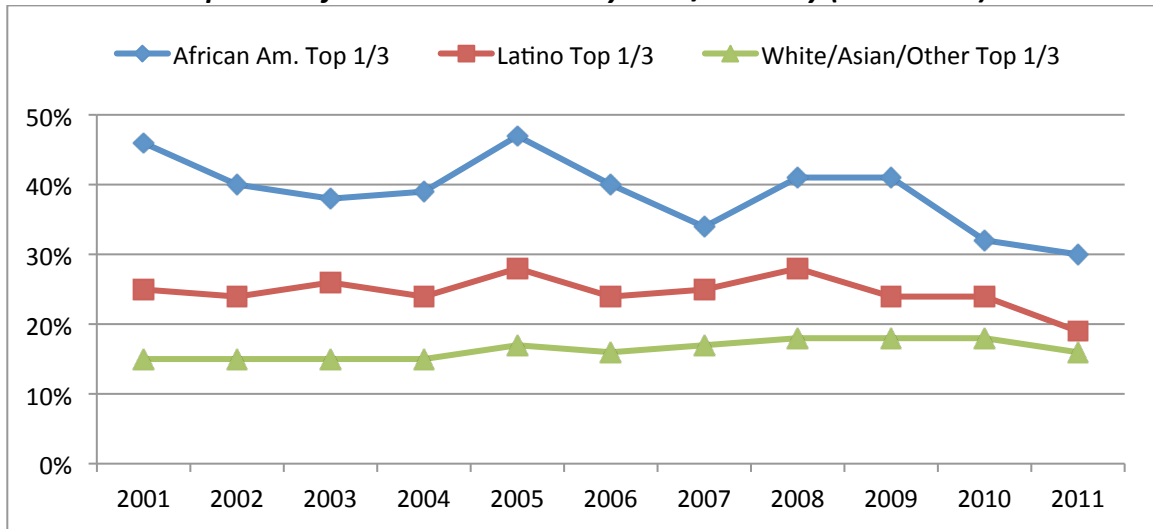
Detailed data in Wilbur’s study of the 2005 admissions cycle indicate that nearly half of these African Americans in the top third of UC’s admit pool who declined a UC offer ended up enrolling at Harvard, Stanford, Yale or Princeton (with Stanford and USC the top two choices for Latinos).⁶⁰ Detailed data from the 2008 admissions cycle indicates that for underrepresented minority admits in the top third of UC’s admit pool who ended up enrolling elsewhere, eleven of the top twelve destinations were private selective institutions with affirmative action.⁶¹ And in the middle third of UC’s admit pool African Americans (and Latinos, but to a lesser degree) also consistently enrolled at selective privates with affirmative action at higher rates than UC admits overall in 2001-11.⁶²

⁶⁰ Susan A. Wilbur, *Investigating the College Destinations of University of California Freshman Admits*, in ERIC GRODSKY & MICHAL KURLAENDER EDS., *EQUAL OPPORTUNITY IN HIGHER EDUCATION – THE PAST AND FUTURE OF CALIFORNIA’S PROPOSITION 209*, at 63, 72, 76 (2010). Wilbur’s paper reports a yield rate of 26% for African Americans in the top third of UC’s admit pool, compared to 29% in the earlier chart in this paper. These modest differences are attributable to the fact that the National Student Clearinghouse data set is different than UC’s internal data set.

⁶¹ In descending order: USC, Stanford, Cal Poly (the lone exception--likely attractive at niche quality/tuition price point), MIT, Harvard, Princeton, Yale, Brown, Penn, Duke, Cornell and Dartmouth. See BOARS Report, *supra* at 83.

⁶² These percentages are somewhat understated as an artifact of controlling for participation rate differences over time in the relevant data source (thus facilitating longitudinal comparisons). In other words, the chart is anchored to institutions participating in the National Student Clearinghouse as of 2001, whereas institutions joining the Clearinghouse after that year are excluded. Without this restriction, in e.g., 2009 the African American percentage enrolling at selective private institutions goes from 41% to 44%, and the Latino rate from 24% to 28%, while the overall rate goes up from 19% to 22%.

Percentage of UC Freshmen Admits Enrolling at Private Selective Institutions, Top Third of the UC Admit Pool by Race/Ethnicity (2001-2011)



No. Overall in top third of UC admit pool = 216,517

No. Enrolling at Private Selective Institutions: 1,340 African Americans, 5,064 Latinos, and 38,142 Overall

The potential dangers of stigmatic harm are most salient for African Americans for deep-seated reasons related to the broader U.S. society,⁶³ so the fact that African Americans are especially likely to enroll at elite private universities with affirmative action when they have the choice to enroll instead at Berkeley, UCLA and other UC campuses is something that poses a high burden of explanation for those advancing the stigma theory as a justification for ending affirmative action in higher education.

So far, I've presented UC yield data on African Americans and Latinos going back to 1994 but destination data from the National Student Clearinghouse for selective private institutions that only goes back to 2001 (due to current availability constraints). What follows is a synthesis of other previously published National Student Clearinghouse data (with slightly different parameters—see Appendix B) on UC admits from Geiser & Caspary's study and a recent UC faculty admissions committee report.⁶⁴ These data represent somewhat of a compromise format compared to the analyses above, and help to round-out an otherwise partly incomplete picture of UC admits choosing to enroll at selective private universities and colleges. The tables

⁶³ See e.g., MICHAEL INZLICHT & TONI SCHMADER EDs., *STEREOTYPE THREAT: THEORY, PROCESS, AND APPLICATION* (2012); CLAUDE M. STEELE, *WHISTLING VIVALDI: AND OTHER CLUES TO HOW STEREOTYPES AFFECT US* (2010); Crystal M. Fleming et al., *African Americans Respond to Stigmatization: the Meanings and Salience of Confronting, Deflecting Conflict, Educating the Ignorant and 'Managing the Self,'* 35 *ETHNIC & RACIAL STUDIES* 400 (2012).

⁶⁴ Saul Geiser & Kyra Caspary, "No Show" Study: *College Destinations of University of California Applicants and Admits Who Did Not Enroll, 1997-2002*, 19 *EDUC. POL'Y* 396, 408, 410 (2005); UNIV. OF CAL. BOARD OF ADMISSIONS AND RELATIONS WITH SCHOOLS (BOARS), *COMPREHENSIVE REVIEW IN FRESHMAN ADMISSIONS AT THE UNIVERSITY OF CALIFORNIA 2003-2009*, Appendix C at 86-87 (May 2010), available at http://www.universityofcalifornia.edu/senate/reports/HP_MGYreBOARS_CR_rpt.pdf.

and discussion below focus on underrepresented minorities overall (not African Americans and Latinos separately), but these data span 1997 to 2008 so at least one pre-209 comparison year is available.⁶⁵ In addition, these data allow a comparison of differences over time vis-à-vis whites/Asian Americans/others.

In 1997, before Prop 209 took effect, 19% of underrepresenting minority admits to UC in the top third of the admit pool choose to enroll at selective private universities with affirmative action (though if the figures were separately available, African Americans’ rates would be much higher, consistent with the earlier data). In the first couple years under Prop 209 (1998 and 1999) this dropped to 16% of underrepresented minority freshmen admits, but the pattern reversed by 2000 – growing to 22-24% in 2000-2002 and to 30-35% in 2003-2008.⁶⁶ In other words, in 1997 there was a +7.5 point difference between underrepresented minorities and whites/Asian Americans/Others in the top third of UC’s admit pool choosing to attend selective private universities, but under Prop 209 (1998 to 2008 average) this jumped to +12.1 points.

UC Admits going to Selective Privates, from the Top Third of UC’s Freshmen Admit Pool, Underrepresented Minorities versus White/Asian Americans/Others, 1997-2008⁶⁷

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
URMs to Selective Privates	19.1% (of 1108)	16.3% (of 1161)	15.7% (of 1189)	22.2% (of 1195)	23.5% (of 1411)	23.9% (of 1522)	30.2% (of 1542)	33.5% (of 1468)	35.1% (of 1625)	32.6% (of 1930)	31.1% (of 2071)	34.4% (of 2186)
Whites/AAPIs/Others to Private Select.	11.6% (of 11371)	10.9% (of 12042)	11.2% (of 12602)	12.9% (of 12881)	12.4% (of 14039)	12.7% (of 14496)	15.7% (of 14055)	17.3% (of 13317)	17.4% (of 13670)	17.8% (of 15598)	18.2% (of 15766)	18.9% (of 16316)
Difference	+7.5	+5.4	+4.5	+9.3	+11.1	+11.2	+14.5	+16.2	+17.7	+14.8	+12.9	+15.5

⁶⁵ 1995 is for some purposes a preferred “pre-209” baseline for undergraduate changes because to some extent pre-209 chilling effects were manifest by 1996 and 1997, but this is complicated and 1997 data should not be ignored. Cf. Eric Grodsky & Michal Kurlaender, *The Demography of Higher Education in the Wake of Affirmative Action*, in ERIC GRODSKY & MICHAL KURLAENDER EDS., EQUAL OPPORTUNITY IN HIGHER EDUCATION – THE PAST AND FUTURE OF CALIFORNIA’S PROPOSITION 209, at 33, 41 (2010); University of California Office of the President, Undergraduate Access to the University of California After the Elimination of Race-Conscious Policies p. 15 (March 2003), available at http://www.ucop.edu/sas/publish/aa_final2.pdf.

⁶⁶ More detailed information on specific schools is available for 2008. Of the top dozen destinations of underrepresented minorities in the top third of the admit pool who enroll outside UC, eight of the twelve are also in the top dozen list for all UC admits in the top third (USC, Stanford, Cal Poly, MIT, Harvard, Brown, Penn and Cornell). Thus, while a typical underrepresented minority admit in this upper echelon is being given an affirmative action plus factor at elite privates, the Asian Americans and whites in this group also have overlapping enrollment choices outside UC. See BOARS report, *supra* at 83. The same was true (nine of the top dozen) for the top third of the UC admit pool in 2002. Geiser & Caspary, *supra* at 402 tbl.2.

⁶⁷ As explained in Appendix B, a strong majority of these underrepresented minority students in the top third of the admit pool were in fact admitted to Berkeley and/or UCLA (obviating the need for a separate Berkeley/UCLA table).

Unless the white/Asian/other students had somehow become significantly less academically competitive over these dozen years (which is not the case⁶⁸), this growing gap in enrollments at selective private universities again confirms that stigma avoidance does not seem to be a key driver of enrollment behavior for highly accomplished underrepresented minority students.

Repeating the same analysis for the middle third of UC's admit pool reveals that underrepresented minority students are more likely to enroll in selective private universities than whites/Asian Americans/others, and the gap increased slightly in the years since Prop 209.

UC Admits going to Selective Privates, from the Middle Third of UC's Freshmen Admit Pool, Underrepresented Minorities versus White/Asian Americans/Others, 1997-2008

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
URMs to Selective Privates	8.4% (of 2285)	9.9% (of 2282)	9.4% (of 2375)	8.8% (of 2561)	8.5% (of 3076)	7.9% (of 3325)	11.1% (of 3074)	12.3% (of 2867)	11.1% (of 3030)	9.7% (of 3649)	10.3% (of 4066)	9.1% (of 4350)
Whites/AAPIs/Others to Private Select.	5.8% (of 10819)	6.4% (of 11806)	5.5% (of 12556)	5.8% (of 12611)	4.3% (of 13955)	4.3% (of 14531)	5.7% (of 12739)	6.5% (of 12217)	5.6% (of 12449)	5.6% (of 14024)	6.7% (of 13900)	4.9% (of 14479)
Difference	+2.6	+3.5	+3.9	+3.0	+4.2	+3.6	+5.4	+5.8	+5.5	+4.1	+3.6	+4.2

Students in the bottom third of UC's admit pool are less relevant to the analysis of stigma, but repeating the same analysis for the bottom third of the pool again provides no evidence of a Prop 209 warming effect.⁶⁹ Unlike the top third of the UC admit pool where California State University (CSU) is not a significant player as far as enrollment destinations, in the bottom third of the pool there has been a rise in underrepresented minority admits choosing to enroll in the CSU system -- from 12% in 1997-99 to 24% in 2006-08. While analysis of Prop 209 and CSU is relevant in its own right, this CSU pattern is less germane to the stigma affirmative action debate (because Prop 209 took effect in phase at both UC and CSU, starting in 1998) and may be driven by issues like tuition price and student debt sensitivity that are orthogonal to Prop 209. Moreover, the evidence described in my companion article (which counters claims of undergraduate "mismatch") suggests consistent with national trends that freshmen who

⁶⁸ See Tongshan Chang & Heather Rose, *A Portrait of Underrepresented Minorities at the University of California, 1994-2008*, in ERIC GRODSKY & MICHAL KURLAENDER EDS., *EQUAL OPPORTUNITY IN HIGHER EDUCATION – THE PAST AND FUTURE OF CALIFORNIA'S PROPOSITION 209*, at 83, 91 FIG. 5.2 (2010) (reporting academic index scores for UC admits and enrollees for 1994 to 2008). Cf., Sigal Alon & Marta Tienda, *Diversity, Opportunity, and the Shifting Meritocracy in Higher Education*, 72 Am. Soc. Rev. 487 (2007).

⁶⁹ See Geiser & Casparly, *supra* at 411; BOARS report, *supra* at 88. In the bottom third of the UC admit pool there is a fair amount of noise in the data, before Prop 209 underrepresented minorities were negligibly less likely (difference of -0.2 points) than white/Asian American/other students to enroll at private selective colleges, whereas in the eleven years after Prop 209 (1998-2008), underrepresented minorities were marginally more likely to enroll at elite privates (difference of +0.9). Before Prop 209, underrepresented minorities in the bottom third of the pool were slightly more likely than white/Asian American/other admits in to enroll at UC (difference of +1.3 points), but this advantage melted away in the eleven years since Prop 209 (overall difference of -0.2 points) with a lot of bounce from year to year.

choose instead to enroll at CSU rather than UC are not likely to enjoy net gains in subsequent graduation rates or labor market earnings.⁷⁰

Addressing the question of enrollment choices before and after Prop 209, Geiser & Caspary analyzed the 1997-2002 UC admit pools. Geiser & Caspary found that “private selective institutions have been the main beneficiary of UC’s loss of top underrepresented minority admits” after Prop 209, and they concluded:

A further part of the explanation may lay in the symbolic message that SP-1 and Proposition 209 sent to underrepresented minorities, many of whom may have come to view UC as less welcoming than in the past. Whatever the precise reasons for it, however, the trend is clear: Following UC’s elimination of affirmative action, private selective enrollment of top underrepresented minority admits to UC jumped by approximately six percentage points in 1999-2000, while the UC enrollment rate for these students fell by almost the same amount.⁷¹

The Geiser & Caspary study (and other studies noted below) confirm that Antonovics & Sander are in error when they claim that a robust pre- and post-209 analysis of UC yield rate patterns had never been published.⁷² As indicated in the tables above, the problem worsened in the years not covered in Geiser & Caspary’s study (2003 to 2008). While it is unclear why the gap widened even more so many years after Prop 209 took effect (e.g., it could be that UC’s tuition and financial aid package advantage gradually lessened as tuition increased in the state budget downturn of 2003-04 and thereafter⁷³), stigma avoidance doesn’t exert much heft in stopping it, and that is the main point for present purposes. In addition, using a different approach and IPEDS data, Grodsky & Kurlaender also found a shift from UC to private institutions among

⁷⁰William C. Kidder, *Misshaping the River: Proposition 209 and Lessons for the Fisher Case*, 39 J. COLLEGE & UNIV. LAW ____ (forthcoming 2012), working paper version at pp. 36-47, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2123653. For analysis of CSU and Prop 209 admissions, see Grodsky & Kurlaender, *supra* at 36-58.

⁷¹ Geiser & Caspary, *supra* at 401.

⁷² Antonovics & Sander (page 9) claim: “We know of no past research that has cleanly tested how bans on the use of racial preferences in college admissions affect minority yield rates...Several authors have been specifically interested in the chilling effect, but have not analyzed it robustly for a variety of reasons: writing before the results of such bans could be observed (Orfield and Miller, 1998); using aggregate-level data that does not allow the modeling of individual student choices (Barrios, 2006); or examining admission and yield behavior after, but not before, the implementation of a racial preference ban (Wilbur, 2010).”

⁷³ For example, Geiser & Caspary observe “After taking into account differences in financial aid packages, the net savings of choosing UC over a private school is on average \$4,000 less for African Americans and Latinos than for other students, according to a recent UC study (University of California, 2003).” *Id.* at 401. This pricing advantage could have diminished even more or become negative between 2003 and 2008 vis-à-vis highly selective private universities.

African American freshmen after Prop 209,⁷⁴ and Santos et al. used a “disparate impact” framework in concluding (based on a comparison of 1995, 1998 and 2002 data) that related to Prop 209 underrepresented minority students admitted to UC “opt for colleges outside the UC system at rates significantly larger than their majority peers.”⁷⁵

The data reviewed in this paper call into question claims about Prop 209 warming effects and stigma abatement. Most importantly, the data reviewed in Part II of this paper provide a better and more encompassing basis for testing warming effects because it combines elements of natural experiment comparisons at UC before and after Prop 209 with natural experiment comparisons of UC post-209 and (at least to a limited extent) private selective colleges and universities that continue to practice affirmative action. Other researchers studying yield and enrollment trends in relation to e.g., the affirmative action ban and Ten Percent Plan in Texas recognize the critical importance of having data on private competitor universities.⁷⁶ A critical limitation in Antonovics & Sander’s methodology is that they analyzed students admitted to eight UC campuses in the 1995 to 2000 period (three years before and after Prop 209), but what happened to students admitted to UC but who chose to enroll *elsewhere* was beyond the purview of their study.⁷⁷

Given that only three-fifths of UC admits end up enrolling at a UC campus (and given the race-differential patterns described above), the Antonovics & Sander study misses the part of the story that is arguably most relevant to the scholarly analysis of stigma and affirmative action. As noted earlier, higher education admissions is a dynamic and interconnected process, and so one must have real data on the most relevant group of UC’s competitor institutions (i.e., the

⁷⁴ Grodsky & Kurlaender, *supra* at 48.

⁷⁵ José L. Santos et al., *Is “Race-Neutral” Really Race-Neutral?: Disparate Impact Towards Underrepresented Minorities in Post-209 UC System Admissions*, 81 J. HIGHER EDUC. 675, 697 (2010) The authors noted the following confounder regarding yield rate disparate impact analysis and Prop 209: “If a student is accepted at five UCs and attends one, they have an enrollment rate of 1/5 or 0.2 whereas a student who applies to two and enrolls in one has an enrollment rate of 1/2 or 0.5. URM’s tend to apply to, and are therefore accepted at, fewer UC institutions than their majority counterparts. Thus, the lack of adverse impacts in the enrollment phase is an artifact of this trend.”). *Id.* at 698 n.11.

⁷⁶ John F. Kain et al., *Hopwood and the Top 10 Percent Law: How They Have Affected the College Enrollment Decision of Texas High School Graduates* iii (2005), available at http://www.utdallas.edu/research/tsp-erc/pdf/wp_kain_2005_hopwood_top_10_percent.pdf.pdf (“An important caveat to our conclusions is that our analyses suffer from a lack of information regarding student attendance at private and out-of-state institutions. We seek to remedy this gap in future work.”).

⁷⁷ Antonovics & Sander, *supra* at 12-13, figs. 1-4, tbls. 1-8. It appears that such data were not obtained by Antonovics & Sander: “[o]ur data do not allow us to directly examine what happened to URM’s relative chances of being admitted to schools outside the UC system after Prop 209.” *Id.* at 25. Rather, Antonovics & Sander attempt crude estimates of students enrolling outside UC treated as a single undifferentiated category (e.g., California Community Colleges and elite private universities would be lumped together in this constructed category) and using proxies based on SAT test-taker patterns. *Id.* at 26.

selective privates with affirmative action) before drawing conclusions in this area of research. Consequently, without firm data on UC admits who choose to enroll at Stanford, Harvard and other selective private institutions, it is questionable for Antonovics & Sander to “hypothesize that Prop 209 may have increased the signaling value of attending a UC” for underrepresented minorities and to claim that “the warming effect is strongest at the most selective UC campuses.”⁷⁸

Returning to the opening quote about an African American student choosing between admission offers from UC Berkeley and Stanford, the data from both the top and middle thirds of UC’s admit pools over a dozen years provide a limited refutation of the stigma critique of affirmative action, by showing that to the extent the most accomplished underrepresented minorities have a choice between enrolling at the University of California or selective private universities, these students are relatively more likely than other students to spurn an offer from UC in favor of elite private universities with affirmative action. Again, this trend has widened in recent years.

The above tables (and the prior chart covering 2001 to 2011) represent somewhat of a conservative test of underrepresented minority enrollment choices in the sense that in the UC admit pool all (100%) of these students were offered admission to UC Berkeley, UCLA and/or other UC campuses, whereas only a smaller subset would have been offered admission at Harvard, Stanford, USC, Cornell, etc. While it is not possible to parse from these data the contribution of students’ concerns about stigma per se as one would hope to do with survey data, the important point is the robust “negative evidence” that whatever stigma-avoidance effects underrepresented minority students might care about in theory, when evaluated against the standard of what thousands of students *do* when they “vote with their feet” and make enrollment choices, such concerns about stigma certainly appear to be swamped by the combination of other factors that African American and Latino students seem to care about more, including concerns about racial isolation and the attractiveness of prestige and signals of welcoming qualities found at Stanford, USC, the Ivy League and other selective privates.⁷⁹

⁷⁸ *Id.* at 36.

⁷⁹ Namely, as represented in the figure with two doors, awareness of the reputation and “eliteness” of the institution offering them admission, financial aid packages (which can include race-conscious components at the privates), students’ informal sense of climate and “vibe” based on campus visits and other recruitment activities, and the desire not to enter a learning environment where one is such a tiny minority that there is a risk of racial isolation). See also Santos et al., *supra* at 697 (noting that URMs’ lower yield rates to UC are most likely “due to the competitive advantage private and out of state public institutions possess, as they are able to offer scholarships with racial considerations. However, the ‘chilly’ campus climate perceived by URMs may contribute to their increased departure rates from the UC system.”).

C. Conclusion

In summary, race-related stigma is a thorny and complicated issue in U.S. society with deep roots and history. The critics of affirmative action (both inside and outside the academy) seem to conceptualize stigma as something that should go away or be dramatically reduced by virtue of banning affirmative action,⁸⁰ but the data reviewed in this paper suggest this is an impoverished and simplistic view. In fact, this should not be surprising because such claims are divorced from the conceptual moorings of the academic literature on stigma—which emphasizes the status markings of being different and an outsider.⁸¹ First, Part I of this paper shows that at appreciably lower percentages African American and Latino undergraduates at UC report feeling respected on campus compared to UT Austin and other peer universities. Second, to the degree that some assert ending affirmative action is a valuable social good, Part II of this paper reveals that thousands of underrepresented minority students appear not to be taken in by such a paradigm when presented with real choices about where to enroll. In conclusion, both of the natural experiment data sources reviewed in this paper provide convergent and consistent evidence that for African American college students the stigma reduction “warming effects” claimed to be unlocked by Prop 209 are underwhelming if not entirely illusory. Rather, racial isolation emerges as the more salient phenomenon, particularly with respect to African American and Latino students once they enroll at universities.

⁸⁰ See e.g., Antonovics & Sander, *supra* at 31 (“Removing the stigma of being a ‘special admit’ has both social and economic advantages. Being a URM admitted without a racial preference could increase the signaling value of one’s college degree; thus, Prop 209 may have increased the signaling value of a UC degree for URMs.”).

⁸¹ The classic work in sociology is ERVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* (1963). See also Onwuachi-Willig et al., *supra* at 1310-11 (“A close look at Goffman’s theory of stigma, however, demonstrates the fundamentally misleading nature of those [affirmative action opponents’] arguments, as racial stigma pre-existed the implementation of affirmative action programs by centuries, and continues to persist, perhaps in an even more severe form, in its absence ... What is clear in *Stigma*, though not explicitly stated, is that while stigma may have many causes, it exists because of enforced social hierarchy and, to a lesser extent, social isolation.”).

Appendix A: Additional Information on UCUES/SERU Survey Data

Samples and Representativeness

UC administers UCUES every other year (2008, 2010, 2012, etc.), whereas AAU University #2 thus far does the same thing but in odd-numbered years (2009, 2011, etc.). The breakdown for these grand totals of 1,830 African Americans and 7,920 Latinos are as follows: UC in 2008 563 African Americans and 3,047 Latinos; UC in 2010 447 African Americans and 2,741 Latinos; UT Austin had 102 African Americans and 432 Latinos in 2011 (and 39 and 199 in the smaller 2010 survey; AAU University #1 had 72 African Americans and 211 Latinos; and AAU University #2 had 255 African American and 615 Latino respondents in 2011 and 352 African Americans and 675 Latinos in 2009.

As far as overall response rates, UCUES is administered to all UC undergraduates (not just freshmen or large lecture classes that are easier to capture) and had a respectable overall response rate of 39% in 2008 and 43% in 2010 (note the question above is in one of the modules and is given to a random subset of UCUES respondents). The SERU response rate for UT Austin in 2011 was 42%, and both AAU Universities # 1 and #2 had response rates equal to or higher than UT and UC (being more specific could effectively disclose the identity of these institutions). The above response rates of 39% and above compare favorably to similar national surveys of undergraduates. For instance, the 2011 National Survey of Student Engagement (NSSE) had a 33% response rate nationwide.⁸² Another judgment call was to include UT Austin's 2010 SERU survey notwithstanding the fact that it had a lower response rate of 21% (that year was the first time UT Austin administered the SERU survey). As shown in the second graphic, the results for UT Austin's 2010 and 2011 surveys were nearly identical despite the large difference in response rates, and including both years raises the statistical power where it matters most for purposes of running natural experiment comparisons of UT Austin and UC (and 2011 counts more in the average, in any event, because of the larger sample).

Note that studies indicate that response bias on either SERU or UCUES is not a major problem overall.⁸³ However, in light of the fact that the 2010 and 2011 UT Austin results closely mirror each other, for skeptics concerned about non-response bias, note that African Americans are somewhat less likely to complete UCUES/SERU, and since that is often not random (less happy/engaged students are less likely to participate), if there is any residual non-response bias it is difficult to explain how this could have the effect of overstating the size of the differences between UC versus UT Austin and AAU Universities #1-2. In fact, understating the differences is seemingly more likely.

Data Collection Strategy

The 2008 and 2010 results from the UCUES item analyzed in this paper are in the public domain: <http://www.universityofcalifornia.edu/accountability/index/8.3.1>, and results for 2008 and 2010 for the

⁸² NSSE 2011 Summary 4 (2011) http://nsse.iub.edu/Institutional_Report/NSSE%20Overview.pdf.

⁸³ See e.g., Steve Chatman, SERU Technical Report, No Evidence of Substantive Nonresponse Bias for the 2011 Administration (Nov. 2011), available at <http://cshe.berkeley.edu/research/seru/papers/Chatman.SERUTechReport.NonRespBias.11.19.2011.pdf>; Steve Chatman, Measures of Nonresponse Bias Associated with the 2008 Administration of the University of California Undergraduate Experience Survey (June 2009), available at <http://cshe.berkeley.edu/research/seru/docs/SERU2009TechnicalReport.pdf>.

UC system were nearly identical on this question. UC Merced totals are not reported by UCOP because the much smaller Merced campus did not administer this question module (at least not in both 2008 and 2010). The 2012 UCUES and SERU data were not yet available in time for this paper.⁸⁴

UCUES also asks a more generic question about whether “students are respected here regardless of their race/ethnicity.” Thought that survey item is given to a larger module, it is less informative for purposes of assessing racial climate. As noted by other institutional researchers who work with UCUES, “The second statement, *Students of my race/ethnicity are respected on this campus*, references the student’s individual perception of respect for their own racial or ethnic identity; thus, it more adequately controls for differences in racial and ethnic heterogeneity among the UC campuses.”⁸⁵ The second, more personal statement was chosen in this study because the first question is potentially more blurry for purposes of the research question of interest.

In order to obtain equivalent SERU data, I emailed each of the universities administering the SERU survey and requested that they share their data on the “respect” question. Several universities declined to share their data, others only had 2012 SERU surveys that were underway and would not be available in time for this paper.

In addition to AAU #1 and AAU#2, two other universities provided me with data that are not reported in this paper for a combination of small samples and categorization challenges. One is a public AAU located in a state with relatively few African Americans or Latinos. Consequently the minority presence on campus even with affirmative action is low and the sample of minority respondents is very low. Those minorities who did respond report a high level of feeling respected. Their responses are quite unlike the response of students at UC, where California has both a high minority populations and an affirmative action ban. The data from this university are not inconsistent with my theme in the text that where an affirmative action ban is accompanied by low critical mass, the net effect can be to erode campus climate for underrepresented minority students.

The other responding university (also a public AAU member) whose data I chose not to include was one in which the student body was undergoing transformation as cohorts that entered with affirmative action were graduating and being replaced by post-affirmative action cohorts. The data from this university are not inconsistent with what one finds from the data I present but sample sizes were small and the trajectory of a changing minority presence confuses any conclusions that one might otherwise draw.

Additional Observations Regarding Alternative Hypotheses

To the extent skeptics may emphasize that the UT Austin figures result from stigma-reduction effects associated with the Ten Percent Plan rather than the presence of affirmative action, the 2011 UT Austin data can be separated into those who were and admitted under the Ten Percent Plan versus holistic admissions, which reveals an absence of significant differences for Latinos (92% v. 91%) or African

⁸⁴ See also Gillian Butler & Susan Wilcox, UCUES 2010 – Campus Climate: Race & Ethnicity 3 (Sept. 2011), UC Davis Institutional Analysis - Student Research and Information Report #430, available at <http://www.sariweb.ucdavis.edu/downloads/430.2010%20Climate%20Race&Ethnicity.pdf>.

⁸⁵ Butler & Wilcox, *id.* at 16.

Americans (73% versus 70%) at UT Austin.⁸⁶ Moreover, the AAU #1 African American data (where there is a student body with about 5% African Americans, and where there is affirmative action but not a Percentage Plan admission regime) are also inconsistent with such criticism. Finally, none of that helps to explain the significantly lower results for UC, whereas theories advanced by affirmative action critics yield an expectation that the UC “respect” data should actually be higher than peer institutions with affirmative action.

In a companion article I discuss the issue of “academic mismatch” at length.⁸⁷ The relative absence of mismatch does not explain the higher sense of respect and belonging among African American and Latino students at UC Riverside and lower levels at other UC campuses. With the caveat about not over-interpreting SAT scores (discussed in my other article), note that in the five entering freshmen classes preceding the 2010 UCUES (2005 to 2009 cohorts) the combined Black-White gap in average SAT scores at UC San Diego and UC Riverside were virtually identical (even though San Diego is more selective): 144 points and 139 points on the 1600 point scale, respectively. The Latino-White gaps in SAT scores were also very similar on these two campuses: 177 points and 158 points (and that fact poses a second problem for the “mismatch” explanation because these gaps are larger than for African Americans). Likewise, the black-white gap in SAT scores is 150 points at UC Santa Cruz (another example of a campus with low African American “respect” survey results). Even Antonovics & Sander -- who make claims that I criticize in the text of this paper -- acknowledge the possibility of different climate dynamics at UC Riverside: “...this may reflect the more general perception, unrelated to signaling, that UCR was the most welcoming campus for minorities after Prop 209.”⁸⁸

The UC San Diego example also raises research questions that are beyond the scope of this paper. My intuitive view is that UC San Diego may be like the proverbial canary in the mineshaft, and when the percentage of African Americans is that low it is more vulnerable and less resilient in the face of such hostile climate incidents. But it is difficult to test this hypothesis with the UCUES data (e.g., such events of this scale are fortunately infrequent—unlike more subtle microaggressions—and sometimes occur in the off-cycle years when UCUES is not given, such as a mocking “Tijuana Sunrise” party in 2007 at one of the other UC campuses described in the article below, or the anti-Asian American YouTube rant that went viral in 2011.⁸⁹

It is appropriate to ask whether students’ other background characteristics may explain the differences in UC’s African American and Latino students feeling less respected than at UT Austin and the other two peer research universities. With the data I obtained for this paper I cannot utilize regression analysis to control for other background characteristics. However, some of the plausible counter hypotheses can be addressed by virtue of the “natural experiment” differences between campuses and the prior UCUES literature. For example, one can infer from other data that the African Americans at UC may be more likely to come from low-income and lower-middle income families as compared to UT Austin and AAU#1, which raises the possibility that the combined race-class effect may cause them to feel less respected than African Americans at UT Austin or AAU#1. However, UC Riverside is the campus where

⁸⁶ At UT Austin two-thirds of African American and Latino respondents to this SERU survey item in 2011 were classified as Ten Percent Plan admits.

⁸⁷ Kidder, *Misshaping the River*, *supra*.

⁸⁸ Antonovics & Sander, *supra* at 34.

⁸⁹ See *Racist Incidents, Protests Spread At UC Campuses*, HUFFINGTON POST, March 2, 2010.

the socioeconomic distribution of African American undergraduates is most weighted toward low-income students, so the fact that this is the campus with the highest level of African Americans feeling respected confounds such a race-class hypothesis. Thus, as noted in the text, it is difficult to argue that the results in Part I the byproduct of UC's African Americans having more negative political attitudes and sensibilities than students at research universities in other parts of the country. Similarly, earlier papers on UCUES cited in the text of this paper have emphasized the enduring and distinctive significance of the African American experience on campus.⁹⁰

Appendix B: Additional Information on Yield/Destination Data

Conceptual Framework

The bottom third of UC's admit pool is less relevant in this paper because this is not where the "action" is to be found regarding students' choice sets and questions about Prop 209 and stigma. Overall in the bottom third of UC's admit pool in 2001-11 46% enrolled at a UC campus and only 2% of students enrolled at private selective institutions (because so few were offered admission to elite privates). There is some racial/ethnic divergence here, with African Americans being somewhat more likely to enroll at selective privates (4-7%) and simultaneously a bit more likely to enroll at UC (49%); Latinos in the bottom third of UC's admit pool closely mirror overall patterns in enrolling at UC (46%) and very few going to selective privates (1-2%).

Moreover, in the bottom third of UC's admit pool 33% of all students end up choosing to enroll at a Cal State University or a California community college campus in 2001-11 (which could be for financial reasons, or distance from home, perhaps because of a more comfortable environment with stronger "critical mass", and so on). This combination of large enrollment flow to non-selective institutions and meager enrollment flow to selective private institutions make it difficult to see how the bottom third of UC's admit pool is illuminating regarding questions of chilling effects and warming effects (as well as the "signaling theory" advanced by Antonovics & Sander⁹¹). In the top third of UC's admit pool only 8% enroll at a CSU or community college and 17% enrolled at selective private universities (including 39% of African Americans, 25% of Latinos versus 16% of Whites/Asian Americans/others). Accordingly, the top third of UC's admit pool is a far more fertile data set for assessing the "signal theory" and "stigma" in comparison to the bottom third of UC's admit pool.

While Antonovics & Sander do not partition their study in quite this way, they effectively arrive at a focus on underrepresented minority students near the bottom of the UC admit pool in drawing the

⁹⁰ See e.g., Thomson, *supra* at 14-15; Chatman, *Does Diversity Matter, supra* at 24.

⁹¹ Antonovics & Sander, *supra*. The "signal theory" advanced by Antonovics & Sander is based on the "intuition is that there is little signaling value to attending a school with low admissions standards since most students are admitted, regardless of their ability. As a result, modest increases in *S* will do little to change people's beliefs about the quality of admitted students. On the other hand, since only high-ability students will be admitted to very selective schools (schools with high *S*), further increases in the admissions standard will translate directly into higher beliefs about the ability of those who are admitted." *Id.* at 33. If one accepts this signal theory as a reasonable hypothesis, then note how, as applied to facts I summarize, the theory is in direct tension with the focus of the data in the Antonovics & Sander article that after Prop 209 "increase in yield rates should be the largest for students with relatively low academic ability." *Id.* at 34.

questionable conclusion that “Prop 209 increased the signaling value of attending UC schools for minorities.”⁹² The bottom third of the UC admit pool is not wholly irrelevant – especially for other analytical questions like price sensitivity, “college knowledge” differences by race, etc. and because of the large number of underrepresented minority students found there -- but it is not a good fit for questions about behavior choice and Prop 209.

Additional Observations Regarding Alternative Hypotheses

There was a marked increase in UC’s commitment to K-12 academic preparation (i.e., outreach) programs beginning in the first few years after Prop 209, which Antonovics & Sander dismiss for the following reasons: “[F]irst, most UC outreach efforts during this period focused on expanding the pool of applicants (which, as noted above, is likely to reduce yield rates); and second, the outreach programs developed in the wake of Prop 209 were ambitious and would take years to develop and even longer to affect the applicant pool.” If the unit of analysis is the statewide college-going rate and the question of whether outreach is sufficient as a substitute for race conscious admissions,⁹³ then this argument is highly persuasive because of the modest scale of the UC academic preparation programs relative to the size of the California’s huge high school population.

However, if the question is whether there was an influence on yield rates to UC campuses (especially at the low end of the admit pool), then Antonovics & Sander’s conclusion about outreach is unpersuasive for the following reasons. As shown in the chart below, funding for UC academic preparation programs more than tripled between 1997 and 1998 (peaking in 2002, then receding amidst a state budget crisis). Some of the larger programs in UC’s portfolio, such as EAOP and MESA, focused on helping disadvantaged high school students complete the “A-G” college preparatory curriculum and showed results by 1999 and thereafter of participants being more likely to enroll at UC than either the much larger CSU or California Community College systems.⁹⁴ Perhaps the most telling statistic is that by 2001 nearly 38% of California resident African Americans and Latinos who enrolled as freshmen in the UC system had participated in one of the UC-affiliated academic preparation and school partnership programs, compared to 15% of Asian American and 7% of white freshmen at UC.⁹⁵

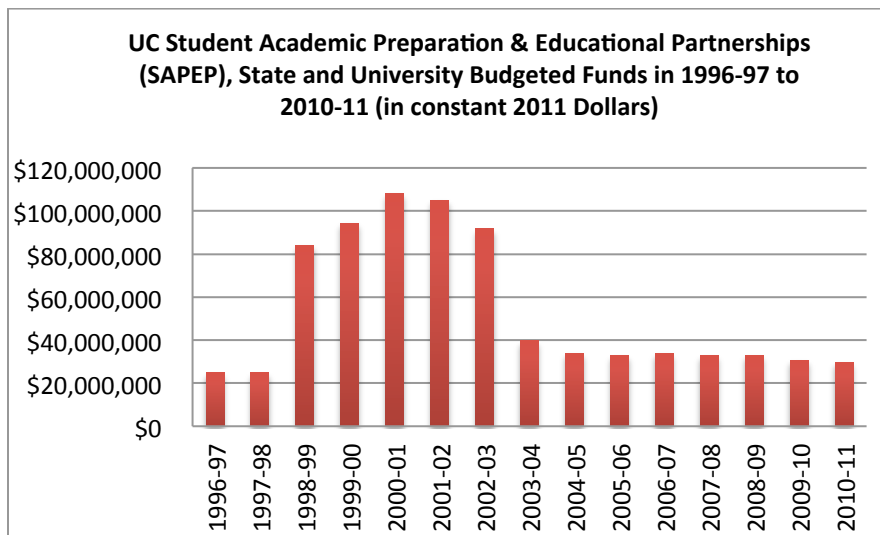
⁹² Antonovics & Sander, *supra*.

⁹³ In the *Fisher v. University of Texas* case the UC President and Chancellors recently concluded in an amici brief that outreach efforts are not sufficient as a race-neutral alternative to affirmative action, *available at* <http://www.utexas.edu/vp/irla/Documents/ACR%20The%20President%20and%20Chancellors%20of%20the%20University%20of%20California-c.pdf>. The same conclusion was reached in a recent Civil Rights Project policy brief. Patricia Gandara, California: A Case Study in the Loss of Affirmative Action (Aug. 2012), *available at* <http://civilrightsproject.ucla.edu/research/college-access/affirmative-action/california-a-case-study-in-the-loss-of-affirmative-action>.

⁹⁴ UC Office of the President, Report to the Governor and Legislature on Student Academic Preparation and Educational Partnerships for the 2004-05 Academic Year 40, 47 (2006), *available at* http://www.universityofcalifornia.edu/news/academicprep_report04-05.pdf. In the MESA program this held true starting in 2000.

⁹⁵ UC Office of the President, Forging California’s Future through Educational Partnerships; Redefining Educational Outreach -- Final Report of the Strategic Panel on UC Educational Outreach at 29 fig. 7 (Feb. 2003), *available at* http://www.ucop.edu/sas/publish/edu_partnerships.pdf.

It is these larger programs like EAOP and MESA that also sustained lesser (though quite substantial) budget cuts in 2003-04 as a number of smaller boutique programs were eliminated altogether.⁹⁶ By 2002 empirical research indicated that EAOP participants were twice as likely to complete the A-G curriculum as similar non-participants⁹⁷ and students in the High School Puente program were twice as likely as similar non-participants to enroll in four-year colleges.⁹⁸ Nearly 70% of the students served by UC’s major academic preparation programs at these disadvantaged high schools were underrepresented minorities,⁹⁹ and for all of the above factors, it stands to reason that the student most likely to benefit from such programs is the student who would end up in the bottom third of UC’s admit pool and would have high a likelihood of enrolling at UC because a UC campus represented his or her best enrollment opportunity relative to other alternatives (contrary to Antonovics & Sander positing a reduction in yield rates). In short, even though Antonovics & Sander’s finding of a warming effect at UC is problematic in general, it is particularly problematic vis-à-vis a key rival hypothesis given their specific focus on a subset of underrepresented minority students with lower admission chances and credentials.



Another confounder that may not be readily appreciated is that UC’s in-state resident undergraduate tuition was \$3,086 in the four years before Prop 209 (1994-97) but actually *dropped* after Prop 209 (to \$2,896 in 1998 and then to \$2,716 in 1999-2001),¹⁰⁰ meaning that UC was gradually accruing a price advantage relative to tuition trends at competitor institutions. To some extent this could have either operated as a modest headwind vis-à-vis the “chilling effect” hypothesis or could have modestly blunted

⁹⁶ UC Office of the President, Report to the Governor and Legislature on Student Academic Preparation and Educational Partnerships for the 2009-10 Academic Year 16 tbl. 3 (2011), available at <http://budget.ucop.edu/legreports/1011/documents/sapep-funds-outcomes.pdf>.

⁹⁷ Denise Quigley, The Early Academic Outreach Program (EAOP) and Its Impact on High School Students' Completion of the University of California's Preparatory Coursework at 20 (March 2002), UCLA Center for the Study of Evaluation, available at http://www.eaop.org/documents/d_quigley_impact_2002.pdf.

⁹⁸ Patricia Gandara, *A Study of High school Puente: What We Have Learned About Preparing Latino Youth for Postsecondary Education*, 16 Educ. Policy 474 (2002).

⁹⁹ *Id.* at 4.

¹⁰⁰ UC Tuition/Fee History, available at http://budget.ucop.edu/fees/documents/history_fees.pdf. Students also pay Student Services fees, which were flat for that entire span.

the impact of the post-209 elimination in race-conscious financial aid at UC (where most aid was need-based even before Prop 209).

Additional Data Tables: The Period Immediately Before & After Prop 209

As confirmed in the table below, focusing more narrowly on the four years before and after Prop 209 likewise reveals a consistent decline in African American and Latino freshmen yield rates to the UC system. By contrast, over the same period, African American and Latino yield rates increased in the bottom third of *campus* admit pools. This pattern may seem paradoxical, but it is not contradictory (recall the earlier quote from Mark Long about minority yield rates potentially rising at a university as a consequence of having fewer admission offers to choose from after an affirmative action ban). For related reasons (and due to sample sizes in the top third of the pool), the UC system data are given much more emphasis in this paper, as the UC system data are more tailored to the comparative “natural experiment” question of what choices candidates made at UC compared to selective private universities not covered by Prop 209. Regarding the increasing yield rates in the bottom third of UC campus admit pools, it is also important to keep in mind the discussion immediately above indicating the seemingly influential role of UC academic preparation/outreach programs.

**Freshmen Yield Rates to UC by Top/Middle/Bottom
Thirds of the UC Admit Pool (1994-97 versus 1998-2001)**

	Top Third	Middle Third	Bottom Third
African Americans			
1994	38%	60%	68%
1995	32%	66%	66%
1996	42%	58%	58%
1997	44%	63%	63%
Pre-209 Avg.	39%	61%	64%
1998	39%	58%	58%
1999	32%	50%	61%
2000	42%	52%	60%
2001	30%	50%	54%
Post-209 Avg.	36% ↓	53% ↓	58% ↓
Latinos			
1994	53%	66%	65%
1995	50%	64%	63%
1996	52%	62%	58%
1997	51%	60%	56%
Pre-209 Avg.	52%	63%	61%
1998	52%	56%	57%
1999	52%	59%	58%
2000	51%	60%	56%
2001	48%	57%	51%
Post-209 Avg.	51% ↓	58% ↓	56% ↓
Whites/Asian Americans/Others			
1994	58%	63%	64%
1995	56%	62%	63%
1996	56%	62%	60%
1997	58%	63%	60%

Pre-209 Avg.	57%	63%	62%
1998	60%	61%	58%
1999	61%	60%	56%
2000	62%	60%	55%
2001	61%	60%	50%
Post-209 Avg.	61% ↑	60% ↓	55% ↓

Average Freshmen Yield Rates at UC Campuses by Top/Middle/Bottom Thirds of the UC Admit Pool (1994-97 versus 1998-2001)

	Top Third	Middle Third	Bottom Third
African Americans			
UCB 1994-97	14% ↓	13% ↑	43% ↑
UCB 1998-01	7% ↓	15% ↑	51% ↑
UCD 1994-97	11% ↓	18% ↓	24% ↑
UCD 1998-01	8% ↓	16% ↓	32% ↑
UCI 1994-97	11% ↓	13% ↑	23% ↑
UCI 1998-01	7% ↓	18% ↑	33% ↑
UCLA 1994-97	24% ↓	27% ↓	43% ↑
UCLA 1998-01	8% ↓	20% ↓	53% ↑
UCR 1994-97	17% ↓	20% ↓	27% ↑
UCR 1998-01	11% ↓	19% ↓	33% ↑
UCSD 1994-97	13% ↓	15% ↓	17% ↑
UCSD 1998-01	8% ↓	14% ↓	21% ↑
UCSB 1994-97	10% ↓	14% ↓	31%
UCSB 1998-01	5% ↓	13% ↓	31%
UCSC 1994-97	7% ↓	8% ↑	20% ↑
UCSC 1998-01	6% ↓	14% ↑	24% ↑

Latinos			
UCB 1994-97	22% ↓	30% ↓	42% ↑
UCB 1998-01	16% ↓	27% ↓	49% ↑
UCD 1994-97	19% ↓	20% ↑	28% ↑
UCD 1998-01	11% ↓	22% ↑	35% ↑
UCI 1994-97	14% ↓	19% ↑	28% ↑
UCI 1998-01	11% ↓	20% ↑	34% ↑
UCLA 1994-97	17% ↑	30% ↑	46% ↑
UCLA 1998-01	18% ↑	35% ↑	55% ↑
UCR 1994-97	21% ↓	22% ↓	27% ↑
UCR 1998-01	13% ↓	20% ↓	33% ↑
UCSD 1994-97	11% ↑	18% ↑	25% ↑
UCSD 1998-01	12% ↑	21% ↑	30% ↑
UCSB 1994-97	12%	19% ↑	31% ↑
UCSB 1998-01	12%	20% ↑	36% ↑
UCSC 1994-97	10% ↓	14% ↑	24% ↑
UCSC 1998-01	9% ↓	16% ↑	27% ↑

Whites/Asian Americans/Others			
UCB 1994-97	33% ↑	46% ↑	60% ↑
UCB 1998-01	34%	47%	61%
UCD 1994-97	15% ↓	28% ↓	42% ↑
UCD 1998-01	12%	27%	44%
UCI 1994-97	12% ↓	27%	45%
UCI 1998-01	10%	28%	45%
UCLA 1994-97	20%	40%	58%
UCLA 1998-01	20%	43%	60%
UCR 1994-97	15% ↓	17%	29%
UCR 1998-01	11%	17%	31%
UCSD 1994-97	13% ↓	25%	39%
UCSD 1998-01	11%	26%	41%
UCSB 1994-97	13% ↓	25%	38%
UCSB 1998-01	12%	24%	40%
UCSC 1994-97	14% ↓	22%	28%
UCSC 1998-01	12%	20%	29%

Additional Technical Details Regarding Yield Rate Data

The main difference between the final set of tables in Part II spanning 1997 to 2008 and the original studies upon which these tables are based is that in both Geiser & Caspary’s article and the BOARS report, I have subtracted underrepresented minorities from overall UC totals to produce the “White/AAPI/Other” category. I believe this modification is preferred and appropriate because it allows a somewhat more precise set of comparisons.

Secondly, note that there are some “unknown” cases where UC does not know where the admitted student ended up attending, and this lessened over the years as more institutions participated in the National Student Clearinghouse. Geiser & Caspary adjusted for the decline in unknown cases, effectively holding things constant for 1997-2002 (see page 416 n.6). While the earlier National Student Clearinghouse data for 2001-11 are anchored to a 2001 set point, I read Geiser & Caspary as excluding institutions unless they participated in the Clearinghouse as of 1997, so there are modest differences when comparing these data sets though each is internally consistent.

By contrast, the 2003-08 BOARS data seem not to have imposed this constraint about holding things constant, and during that span participation rates in the National Student Clearinghouse continued to go up, though the “unknown” category for URM’s in the top third of the pool only dropped from 9.6% in 2003 to 8.4% in 2008 (and from 5.8% to 5.7% for all admits in the top third of the pool). *Id.* at 77, 86-87. These differences in reporting formats explain the “jump” in the tables below between 2002 and 2003, as some institutions that were previously classified as “unknown” in Geiser & Caspary (because they weren’t in the Clearinghouse dating back to 1997) were then classified as “selective privates” in the BOARS data. The “difference” rows in the table address this limitation somewhat, and also keep in mind that “unknown” cases are not ones where the student ended up enrolling at UC. Moreover, because the earlier charts confirm that African American and Latino admits had higher yield rates to UC in 1994-97 than in the years since Prop 209 (and because of the generally inverse trend relationship between UC’s admits choosing to enroll at UC or selective privates), one would have to indulge somewhat heroic assumptions to argue that these shifts in data parameters spuriously favor the “chilling effect” theory advanced in this article.

Regarding the UC system charts and tables about the top third of the UC admit pool, the question arises about how the data look just for Berkeley and UCLA admits. However, a strong majority of these underrepresented minority students in the top third of the UC admit pool were in fact admitted to Berkeley and/or UCLA, so it was not necessary to display a separate Berkeley/UCLA table). In 2003-2008, about two-thirds of these underrepresented minority students were admitted to either Berkeley or UCLA or both.¹⁰¹ The destinations of URM students admitted to Berkeley/UCLA yields the following percentages of students enrolling at selective privates (which are only a point or two different from the table included in this paper): 2003 30.8%, 2004 34.2%, 2005 35.8%, 2006 33.9%, 2007 32.0%, and 2008 36.8%.¹⁰²

¹⁰¹ This is imputed from data on URM students who did not gain admission to Berkeley or UCLA. See BOARS Report, *supra* at 87, 91.

¹⁰² See also Geiser & Caspary, *supra* at 410-14.