

**Office of the President**

**TO THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:**

**ACTION ITEM**

*For Meeting of June 15, 2020*

**ENDORSEMENT OF ASSEMBLY CONSTITUTIONAL AMENDMENT 5 AND THE REPEAL OF PROPOSITION 209 (NOVEMBER 2020 BALLOT)**

**EXECUTIVE SUMMARY**

The Chair of the Board of Regents and the President of the University recommend that the Regents endorse Assembly Constitutional Amendment (ACA) 5 and the repeal of the provisions of Proposition 209. Proposition 209, the 1996 voter initiative codified as Article I, Section 31 of the California Constitution, prohibits the University from discriminating against or “granting preferential treatment” to any individual or group on the basis of race, sex, color, ethnicity, or national origin. Despite years of effort with race-neutral admissions at UC, UC enrollment of students from underrepresented groups and recruitment of faculty of color falls short of reflecting the diversity of California’s population.

**RECOMMENDATION**

The Chair of the Board of Regents and the President of the University recommend that the Regents endorse Assembly Constitutional Amendment (ACA) 5 and the repeal of the provisions of Proposition 209 (1996), which prohibits use of race or gender as a factor in UC admissions decisions.

**BACKGROUND**

Assembly Constitutional Amendment 5 (ACA 5) by Assembly Member Shirley Weber aims to repeal Proposition 209 by placing a measure on the November 2020 ballot. ACA 5 requires a two-thirds vote in each house of the Legislature by June 25, the last day for an initiative measure to qualify for the general election ballot. If ACA 5 qualifies for the ballot and a majority of voters approve the measure in November, the provisions of Proposition 209 in the State constitution would be repealed and UC would be allowed to act in a manner consistent with federal and other applicable law related to public employment, education, and contracting.

ACA 5 passed the State Assembly by a vote of 60 to 14. The bill is currently in the State Senate awaiting referral to committee. ACA 5 is expected to be referred soon to both a policy and a fiscal committee and, if approved by majority votes, proceed to the Senate floor for action prior

to the June 25 deadline. If the Senate approves ACA 5 by a two-thirds margin, a measure would be placed on the ballot for November 2020.

The text of ACA 5 can be viewed [here](#).

Proposition 209, the 1996 voter initiative codified as Article I, Section 31 of the California Constitution, prohibits the University from discriminating against or “granting preferential treatment” to any individual or group on the basis of race, sex, color, ethnicity, or national origin. Proposition 209 was precipitated by Regents’ Special Policy 1 (SP-1) and Special Policy 2 (SP-2) in July 1995. SP-1 ended the use of race, ethnicity, and gender as criteria for admissions to UC or to any program of study. SP-2 prohibited the consideration of the same attributes in the University’s employment and contracting practices. In May 2001, the Regents passed a new resolution (Regents Policy 4401, Policy on Future Admissions, Employment, and Contracting (Resolution Rescinding SP-1 and SP-2)) to rescind SP-1 and SP-2 and to reaffirm the University’s commitment to a diverse student policy. This policy was mostly symbolic in nature as Proposition 209 had been codified in the California Constitution.

Regents Policy 4400, Policy on University of California Diversity Statement, last amended in 2010, renewed the University’s commitment to “the full realization of its historic promise to recognize and nurture merit, talent, and achievement by supporting diversity and equal opportunity in its education, services, and administration, as well as research and creative activity. The University particularly acknowledges the acute need to remove barriers to the recruitment, retention, and advancement of talented students, faculty, and staff from historically excluded populations who are currently underrepresented.”

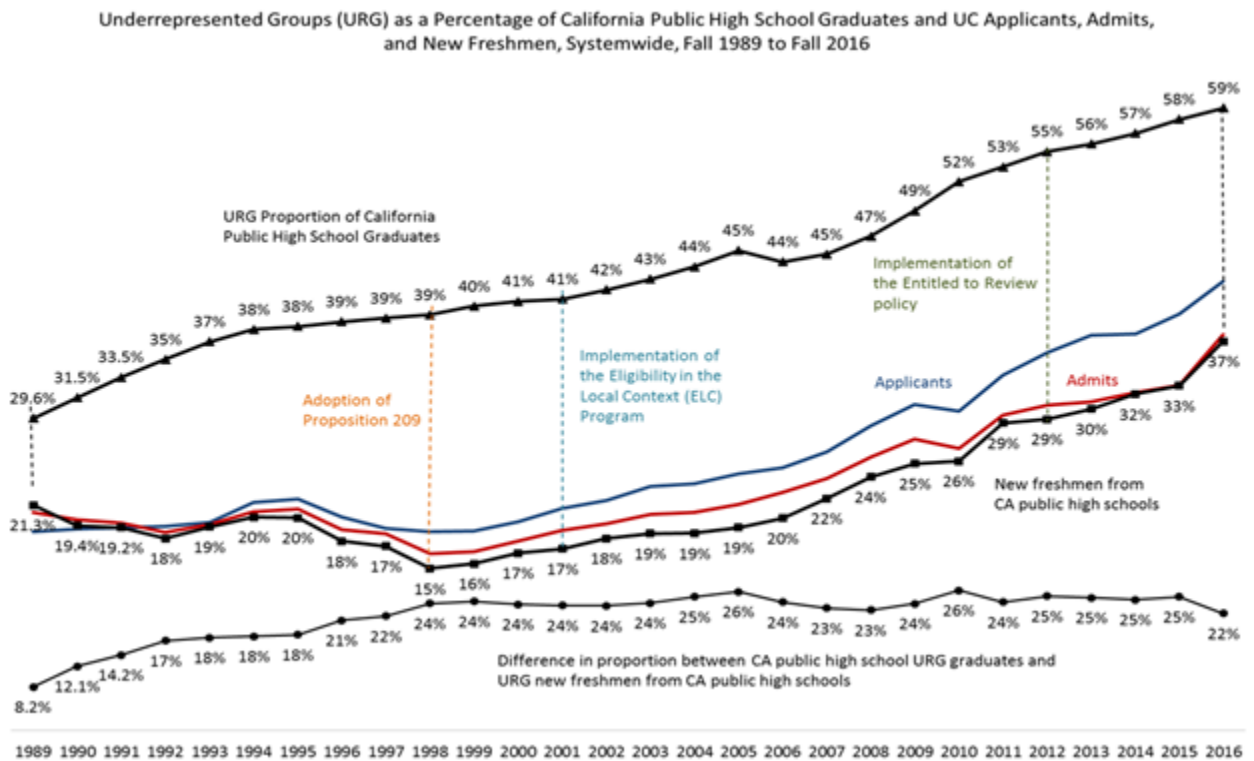
After the passage of SP-1, UC saw a dramatic drop in the number and proportion of freshman from underrepresented groups admitted to and enrolling in UC’s most selective campuses, UC Berkeley and UCLA. These declines drew widespread attention and led to a number of policies and programs to mitigate the effects of Proposition 209. These efforts included the following:

- Expansion of UC outreach programs (1997), including a 100 percent increase in State funding for Student Academic Preparation and Educational Partnerships (SAPEP) programs, followed by a 50 percent cut just four years later.
- Eligibility in the Local Context (2001) which offers guaranteed admission to qualified students in the top nine percent of each participating high school.
- Comprehensive review in undergraduate admission (issued in 2001 and last updated in 2012), the process by which students applying to UC campuses are “evaluated for admission using multiple measures of achievement and promise while considering the context in which each student has demonstrated academic accomplishment.” In implementing comprehensive review, most UC campuses also adopted the holistic review of applicants by trained evaluators.

- Guidelines for Addressing Race and Gender Equity in Academic Programs (2015), a resource for University administrators considering measures that UC can legally implement to support its commitment to diversity.
- A number of systemwide and campus programs to diversify the professoriate and health professions including the President’s and Chancellor’s Postdoctoral Fellowship Programs; Advancing Faculty Diversity initiative, UC Programs in Medical Education (UC PRIME), and the UC-HBCU initiative, among many others.

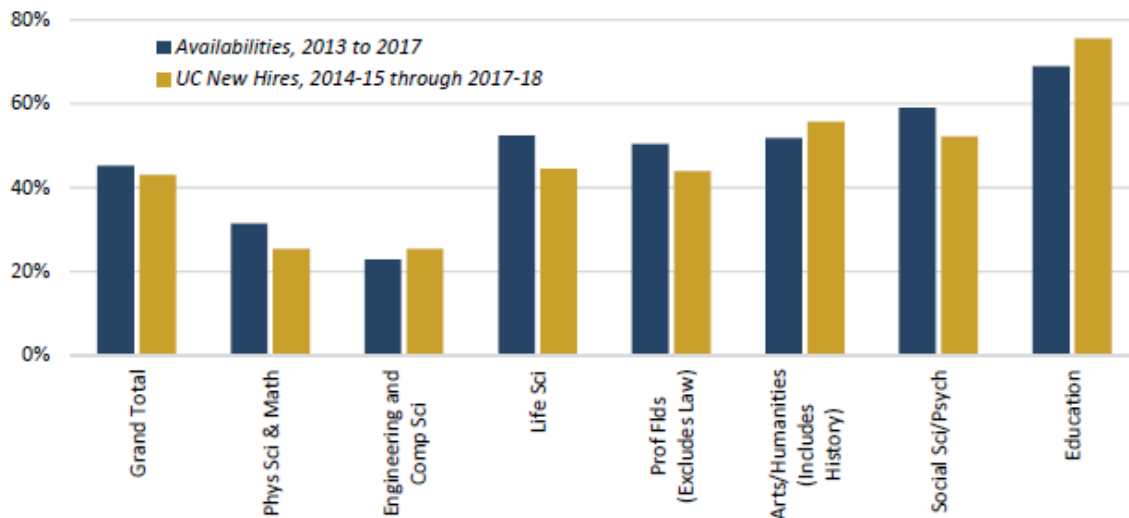
Despite these policy changes and programmatic efforts, UC has not kept pace with the diversity of students in California K-12 schools or with the overall California population. As shown in Figure 1 below, prior to Proposition 209, the proportion of freshmen from underrepresented groups (URG) averaged 19 to 20 percent, then dropped to 15 percent in 1998 then slowly increased over the next 20 years, reaching a peak at 37 percent in 2016—an increase that can be attributed to the increase in enrollment across all UC undergraduate campuses. Meanwhile, the percentage of URG students graduating from high school has nearly doubled to over 56 percent in 2016.

**Figure 1: URGs as Percentage of California Public High School Graduates and as Percentage of UC Systemwide Freshman Applicants, Admits, and Enrollees, Fall 1989 to Fall 2016**



Among faculty ranks, UC has generally kept pace with the availability of URG doctorate recipients in most fields. However, UC has not kept pace with the availability of women PhDs in several fields, including STEM fields such as life sciences, physical sciences, and mathematics (Figure 2).

Figure 2 Female new assistant professors compared with national availability by discipline group, University-wide, 2013–14 to 2017-18



Source: UC Academic Personnel and Program Administration and Survey of Earned Doctorates

Despite UC’s policy and programmatic changes, attempting to address racial inequality without actually considering race has proven to be challenging. Despite nearly two decades of effort and experimentation with race-neutral admissions at UC, the University’s enrollment of students from underrepresented groups and recruitment of faculty of color falls short of reflecting the rich diversity of California’s population.

An amicus brief submitted in 2016 by the University in *Fisher v. University of Texas* summarized the impact of Proposition 209 in short: “UC’s many years of effort and experimentation with a wide variety of race-neutral approaches demonstrates that, at least under current circumstances in California, highly competitive public universities cannot maintain historic levels of diversity within their student bodies—much less reflect in their student bodies a growing state population of underrepresented minorities—using only race-neutral methods.”

President Napolitano, the ten Chancellors, the systemwide Academic Council, the UC Student Association, and the UC Graduate and Professional Council have all publicly expressed their support for ACA 5 and the repeal of Proposition 209.