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FINDING A SILVER LINING: THE POSITIVE IMPACT OF LOOKING BEYOND RACE AMIDST THE NEGATIVE EFFECTS OF PROPOSITION 209

I. INTRODUCTION

For several decades, higher education has served as a prominent forum in the national debate over affirmative action.¹ While the courts have struggled over the past decade to define the contours of acceptable affirmative action policies in higher education,² opponents of affirmative action have succeeded in promulgating comprehensive bans on public affirmative action policies in some states.³ In 1996, voters in California approved Proposition 209, an initiative that amended the state constitution to prohibit preferential treatment for individuals or groups based on “race, sex, color, ethnicity, or national origin” in the context of public education, employment, and contracting.⁴ By passing Proposition 209,

1. The phrase “affirmative action” was first used in an executive order issued by President John F. Kennedy in 1961 to establish the President’s Committee on Equal Employment Opportunity. Exec. Order No. 10,925, 26 Fed. Reg. 1977 (Mar. 6, 1961).

2. *Gratz v. Bollinger*, 539 U.S. 244 (2003) (ruling that an admissions policy that automatically awards points to an applicant solely because of racial minority status violates equal protection); *Grutter v. Bollinger*, 539 U.S. 306 (2003) (upholding use of race as a factor in law school admissions program); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978) (declaring quotas for minorities in medical school admissions program unconstitutional in violation of the Equal Protection Clause of the Fourteenth Amendment while upholding race as a relevant factor in admissions policies); *Hopwood v. Tex.*, 78 F.3d 932 (5th Cir. 1996) (holding that state university law program that gave substantial preferences to minority applicants violated equal protection).

3. CAL. CONST. art. I, § 31 (passed as Proposition 209 in 1996); MICH. CONST. art. I, § 26 (passed as Proposal 2 in 2006); WASH. REV. CODE ANN. §49.60.400 (West 2002) (passed as Initiative Measure No. 2000 in 1998).

4. CAL. CONST. art. I, § 31. The full text of the amendment states:

(a) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(b) This section shall apply only to action taken after the section’s effective date.

(c) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public

California became the first state to adopt such a public policy and Proposition 209 became a model for similar initiatives in other states.⁵

The recent ten-year anniversary of the passage of Proposition 209 presents an occasion to 1) evaluate Proposition 209's impact on public higher education in California in comparison to the earlier predictions of both its proponents and opponents, and 2) examine how Proposition 209 indirectly exposes the expansive role that socioeconomic status plays in determining a student's ranking in an educational meritocracy. Part II of this paper gives an overview of the controversy surrounding Proposition 209 when it was initially introduced, including the predictions of its impact on public higher education by the proposition's supporters and critics as well as subsequent judicial interpretations of its validity and scope. Part III of this paper details the negative impact of Proposition 209 on the college admissions, enrollment, and graduation rates of traditional underrepresented minority groups within the University of California (UC) system. Part IV of this paper focuses on the demographic changes in the UC wrought by Proposition 209 and the increased influence of socioeconomic

employment, public education, or public contracting.

(d) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

(e) Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the state.

(f) For the purposes of this section, "state" shall include, but not necessarily be limited to, the state itself, any city, county, city and county, public university system, including the University of California, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the state.

(g) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of then-existing California antidiscrimination law.

(h) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

5. MICH. CONST. art. I, § 26; WASH. REV. CODE ANN. §49.60.400 (West 2002); Michigan Civil Rights Initiative, <http://www.michigancivilrights.org/aboutus.html> (last visited Feb. 23, 2007). Ward Connerly, the principal architect and proponent of Proposition 209, is listed as a mentor on the official web site for the Michigan Civil Rights Initiative. *Id.* For more information about Ward Connerly, see American Civil Rights Institute, Ward Connerly Biography, http://www.acri.org/ward_bio.html (last visited Jan. 7, 2008).

status in UC admissions. Ultimately, the demographic changes in the UC ushered in as a result of Proposition 209, specifically the dramatic rise in the number and proportion of Asian students, demonstrate that the elimination of affirmative action in public education fosters meritocracy but also expose the extent to which the criteria for determining merit in education is heavily influenced by one's socioeconomic privilege and status.

II. OVERVIEW OF PROPOSITION 209

From its inception, Proposition 209 generated a great amount of controversy. The intense debate over the merits of affirmative action took place not only within California, but also around the country.⁶ The initiative became a hotly contested political issue and eventually attracted attention in the 1996 presidential elections, when Republican presidential candidate Bob Dole endorsed the measure with the hope of boosting his chances of an upset victory in California.⁷ Proposition 209 was hotly contested and various predictions of its impact, good and bad, were made, but it passed and was upheld by courts. Its value is still being debated.

A. *The Arguments for and Against Proposition 209*

Supporters of Proposition 209 argued that the measure would support equal opportunity for everyone instead of favoring minority groups based on "race, sex, color, ethnicity or national origin."⁸ They accused the government of "reverse discrimination" for implementing programs that gave preferences to minority and women businesses.⁹ They argued that this "reverse discrimination" created resentment and division among races while promoting condescension towards

6. Editorial, *Twisting King's Dream*, ATLANTA J. & CONST., Oct. 24, 1996, at A20; Don Feder, *Affirmative Action Is Un-American*, BOSTON HERALD, Oct. 30, 1996, at 031; Jeff Jacoby, *Will Civil Rights Come to California?*, DENVER ROCKY MOUNTAIN NEWS, Sept. 1, 1996, at 77A.

7. Maria L. La Ganga, *Prop. 209 Applies Best Principles of Nation, Dole Says*, L.A. TIMES, Oct. 29, 1996, at E1.

8. Pete Wilson, Ward Connerly & Pamela A. Lewis, *Argument in Favor of Proposition 209*, in CALIFORNIA BALLOT PAMPHLET, GENERAL ELECTION (Nov. 5, 1996), available at <http://vote96.sos.ca.gov/BP/209yesarg.htm>.

9. *Id.*

minorities and women.¹⁰ Furthermore, others have cited arguments that affirmative action in public education demeaned the achievements of minority groups and perpetuated the myth that members of those groups were less capable than their non-minority peers.¹¹

In rebuttal, opponents of the initiative asserted that eliminating affirmative action programs would not automatically guarantee equal opportunity for everyone, but would instead reinforce preferences based on other criteria, such as money and power.¹² Critics contended that discrimination against women and minorities continued to exist and that affirmative action programs were needed to “help ensure equal opportunity for women and minorities.”¹³ While implicitly acknowledging that affirmative action programs needed reforming, affirmative action supporters argued that Proposition 209 was overbroad in eliminating existing mentoring, outreach, and recruiting programs targeting women and minorities.¹⁴

Dire predictions about the impact of Proposition 209 were made prior to its passage. A widely cited law review article referred to a study showing that eliminating affirmative action within the University of California system would cause a precipitous drop in the percentage of Latino and African American students on UC campuses.¹⁵ Critics also concluded that outreach, recruitment, tutoring, and financial aid programs for minority and female students would be eliminated since Proposition 209’s ban on “preferences” could be interpreted to cover any programs unavailable to white male students.¹⁶

Proposition 209 proved popular with a majority of

10. *Id.*

11. Joe Messerli, *Should Affirmative Action Policies, Which Give Preferential Treatment Based on Minority Status, Be Eliminated?*, http://www.balancedpolitics.org/affirmative_action.htm (last visited Feb. 26, 2007).

12. Prema Mathai-Davis, Karen Manelis & Wade Henderson, Rebuttal to Argument in Favor of Proposition 209, in CALIFORNIA BALLOT PAMPHLET, GENERAL ELECTION (Nov. 5, 1996), available at <http://vote96.sos.ca.gov/BP/209yesrbt.htm>.

13. Fran Packard, Rosa Parks & Maxine Blackwell, Argument Against Proposition 209, in CALIFORNIA BALLOT PAMPHLET, GENERAL ELECTION (Nov. 5, 1996), available at <http://vote96.sos.ca.gov/BP/209noarg.htm>.

14. *Id.*

15. Erwin Chemerinsky, *The Impact of the Proposed California Civil Rights Initiative*, 23 HASTINGS CONST. L.Q. 999, 1009 (1996).

16. *Id.* at 1010–12.

California voters and the measure passed with 54% of the popular vote.¹⁷ In the demographic breakdown, 63% of white voters voted for the measure, while only 26% of black voters, 24% of Latino voters, and 39% of Asian voters voted to pass the measure.¹⁸ Since white voters made up 74% of all voters, their vote was the determining factor.¹⁹

B. The Courts Affirm the Validity of Proposition 209 and Clarify Its Scope

After its passage, the federal courts affirmed the constitutional validity of Proposition 209. Although a federal district court initially held that the proposition violated the Equal Protection Clause of the Fourteenth Amendment and granted a preliminary injunction against its enforcement,²⁰ the Ninth Circuit reversed the district court's decision and vacated the injunction.²¹ Citing Supreme Court precedent, the Ninth Circuit noted that any governmental action classifying individuals by race or gender must be justified by at least a substantial government interest and narrowly tailored to advance that interest.²² The court ruled that Proposition 209 did not violate the Equal Protection Clause because instead of classifying individuals on the basis of race or gender, it did the opposite.²³ Furthermore, the court rejected the idea that the amendment constituted a denial of equal protection because it prevented women and minorities from achieving preferential treatment.²⁴ The court reasoned that just because the Constitution narrowly allows classifications by race or gender does not mean that such classifications are required.²⁵

17. AMERICAN CIVIL RIGHTS INSTITUTE, HOW CALIFORNIA VOTED ON PROPOSITION 209, <http://www.acri.org/209votedemographics.html> (displaying data from The Los Angeles Times Demographic Profiles Exit Polls on Nov. 7, 1996) (last visited Jan. 4, 2008).

18. *Id.*

19. *Id.*

20. *Coal. for Econ. Equity v. Wilson*, 946 F. Supp. 1480, 1520–21 (N.D. Cal. 1996).

21. *Coal. for Econ. Equity v. Wilson*, 122 F.3d 692, 711 (9th Cir. 1997).

22. *Id.* at 702.

23. *Id.* (“Rather than classifying individuals by race or gender, Proposition 209 prohibits the State from classifying individuals by race or gender. A law that prohibits the State from classifying individuals by race or gender *a fortiori* does not classify individuals by race or gender.”).

24. *Id.* at 708.

25. *Id.* at 708–09 (“That the Constitution *permits* the rare race-based or gender-based preference hardly implies that the state cannot ban them altogether. . . . The

Since the Ninth Circuit affirmed its constitutionality, Proposition 209 has been interpreted to enjoin a variety of government programs favoring women and minorities. In 1998, a California court of appeals ruled that the state's "supplemental certification" policy violated the state constitution due to the passage of Proposition 209.²⁶ Under "supplemental certification," applicants who did not score in the top three ranks of a competitive exam could still be included on the list of eligible applicants for the state job if they were part of an underrepresented group, such as a racial minority or female.²⁷ The state appeals court ruled that the amended constitution clearly prohibited such preferential treatment.²⁸ Then in 2000, the California Supreme Court held that a city program requiring contractors bidding on city projects to hire a certain percentage of minority or women subcontractors or document attempts to hire them violated the state constitution as amended by Proposition 209.²⁹ The court reasoned that both the hiring and outreach requirements accorded preferential status to certain subcontractors on the basis of race or gender because unless contractors hired or proved that they had attempted to hire minorities or females, their bids would be rejected.³⁰

Proposition 209 has survived challenges to its constitutionality, but whether it represents sound public policy remains debatable. Having been upheld by the courts, its proponents have applied it in government hiring and contracting to achieve its immediate desired effect of eliminating preferences for racial minorities and women.³¹ However, in the decade since its passage, Proposition 209 has contributed to the decline of underrepresented minorities in the University of California system, a trend that will likely continue unless the state finds new ways to address inequalities in the public education system.

Fourteenth Amendment, lest we lose sight of the forest for the trees, does not require what it barely permits.").

26. *Kidd v. State*, 72 Cal. Rptr. 2d 758, 770, 772 (Cal. Ct. App. 1998).

27. *Id.* at 761-62.

28. *Id.* at 770.

29. *Hi-Voltage Wire Works, Inc. v. City of San Jose*, 12 P.3d 1068, 1082 (Cal. 2000).

30. *Id.* at 1084.

31. *Id.* at 1082; *Kidd*, Cal. Rptr. 2d at 770.

III. PROPOSITION 209 HAS NEGATIVELY IMPACTED UNDERREPRESENTED MINORITIES IN THE UNIVERSITY OF CALIFORNIA SYSTEM

The critics of Proposition 209 correctly predicted that the elimination of affirmative action policies favoring underrepresented minorities would not automatically create equal opportunities for everyone, and underrepresented minorities would suffer as a result. As the statistical trend in applications, admissions, and enrollment show, the negative impact of Proposition 209 on underrepresented minorities in California's public higher education system is substantial and unmistakable.³² The overall applications, admissions, enrollment, and graduation rates of minorities in the University of California (UC) system has declined since the passage of Proposition 209 and has only partially recovered in recent years.³³ Due to its selective nature as California's premier public institution of higher learning,³⁴ the UC system provides a clear view of Proposition 209's adverse impact on

32. While underrepresented minority groups have suffered under Proposition 209, it is a different story for women. The overall number and proportion of women in California's public higher education system is higher than ever, following a national trend. The male-to-female ratio of college students enrolled in California's UC and CSU system is 44% to 56%. Sara Mead, *Gender Gap Isn't Biggest Woe*, USA TODAY, July 11, 2006, available at http://www.usatoday.com/news/opinion/editorials/2006-07-11-oppose_x.htm. The male-to-female ratio across all U.S. colleges in 2004 was 43% to 57%, women having outnumbered men on college campuses since 1979. U.S. DEPARTMENT OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATION STATISTICS: 2005 tbl.170 (2006), http://nces.ed.gov/programs/digest/d05/tables/dt05_170.asp?referrer=report. The increased enrollment of women in college spans across all ethnicities, including minority groups. Michelle Conlin, *The New Gender Gap*, BUS. WK., May 26, 2003, available at http://www.businessweek.com/magazine/content/03_21/b3834001_mz001.htm.

33. UNIVERSITY OF CALIFORNIA, OFFICE OF THE PRESIDENT, STUDENT ACADEMIC SERVICES, UNDERGRADUATE ACCESS TO THE UNIVERSITY OF CALIFORNIA AFTER THE ELIMINATION OF RACE-CONSCIOUS POLICIES 3 (March 2003) [hereinafter UNDERGRADUATE ACCESS], available at http://www.ucop.edu/sas/publish/aa_final2.pdf ("[A]lthough the proportions of underrepresented applicants, admitted students, and enrolled freshmen remain lower than in 1995—as well as substantially below their proportion in California's high school graduating class—all campuses have seen these proportions increase in recent years.")

34. *Id.* at 1, 3. Under the 1960 Master Plan for the University of California, only the top eighth (12.5%) of California's high school graduates are considered eligible for admission into the UC system, and admission is not guaranteed. CALIFORNIA STATE DEPARTMENT OF EDUCATION, MASTER PLAN FOR HIGHER EDUCATION IN CALIFORNIA, 1960-1975, at 4 (1960), available at <http://www.ucop.edu/acadinit/mastplan/MasterPlan1960.pdf>.

underrepresented minorities in California's public higher education system.

A. The Proportion of Underrepresented Minorities Admitted and Enrolled in the UC System Has Declined

One clear indicator of this adverse impact is the growing gap between the percentages of underrepresented minorities as California high school graduates and those who are then admitted as UC freshmen. Prior to the passage of Proposition 209, the gap between underrepresented minorities as a percentage of California high school graduates and as a percentage of new UC freshmen was widening after narrowing through the 1980s.³⁵ In 1995, underrepresented minorities constituted 38.3% of all California high school graduates but just 21.0% of all new UC freshmen, a difference of 17.3%.³⁶ And since Proposition 209 formally went into effect, the gap has widened even further.³⁷ In 2005, underrepresented minorities constituted 44.8% of all California high school graduates but only 19.8% of all newly admitted UC freshmen for 2006, a difference of 25%.³⁸ While the growing gap could be partially attributed to changing demographics and the rapidly growing minority student population in California's elementary and secondary schools,³⁹ the decline in underrepresented minorities as a percentage of new UC freshmen can also be partially attributed to the decline of underrepresented minority applications.⁴⁰ The year prior to the passage of Proposition 209, the UC received 51,336 freshman applications, of which 21.1% were from underrepresented minorities.⁴¹ Following its passage, that percentage dropped to just 17.3% in 1999.⁴² Thus, it appears that the publicity of Proposition 209 discouraged underrepresented minority applicants.

35. UNDERGRADUATE ACCESS, *supra* note 33, at 22.

36. *Id.* at 23.

37. *Id.* In 1998, underrepresented minorities constituted 39.4% of all California high school graduates but only 15.5% of all new UC freshmen, a difference of 23.9%.

38. Eleanor Yang Su, *UC Ethnic Shift Revives Proposition 209 Debate*, THE SAN DIEGO UNION-TRIB., Nov. 27, 2006, at A-1, available at http://www.signonsandiego.com/uniontrib/20061127/news_1n27prop209.html.

39. CALIFORNIA DEPARTMENT OF EDUCATION, ENROLLMENT BY ETHNICITY 1981-82 THROUGH 2001-02 (2007), <http://www.cde.ca.gov/ds/sd/cb/enreth.asp>.

40. See UNDERGRADUATE ACCESS, *supra* note 33, at 15.

41. *Id.*

42. *Id.*

The substantial decline of underrepresented minority students within the University of California has been further masked by the overall increase of ethnic diversity in the UC system since the passage of Proposition 209. In 1996, before the passage of Proposition 209, white students made up 46.2% of all enrolled students in the UC system.⁴³ In 2001, the percentage of white students declined to 45.0%, a result of the declining percentage of white students admitted as freshman into the UC.⁴⁴ By 2006, the percentage of white students admitted as freshman into the UC system was just 32.2%.⁴⁵

The decreased proportion of white students would seem to mean that ethnic diversity within the UC system increased during the same period, assuming the decrease of white students was matched by a similar increase in underrepresented minority students. However, from 1996 to 2001, the percentage of underrepresented minority students enrolled in the UC system actually decreased from 18.6% to 17.0%.⁴⁶ After the passage of Proposition 209, the proportion of underrepresented minority freshmen to the overall number of freshmen enrolled in the UC system decreased from 20.8% in 1995 to just 15.1% in 1998, the first year that Proposition 209 formally went into effect for UC admissions.⁴⁷ It represented a 5.7% decline in the proportion of underrepresented minority freshmen.⁴⁸ Nearly a decade later in 2006, the percentage of underrepresented minority freshmen admitted into the UC system stands at 19.8%,⁴⁹ still below its 1995 peak of 20.7%.⁵⁰

The decline in the percentage of underrepresented minority students enrolled in the UC system has occurred at many UC campuses, including the most selective and prestigious schools. From 1995 to 2002, the percentage of underrepresented

43. UNIVERSITY OF CALIFORNIA, OFFICE OF THE PRESIDENT, STUDENT ACADEMIC SERVICES, UC INFORMATION DIGEST 2003, at 15 (Aug. 2003) [hereinafter DIGEST], available at <http://www.ucop.edu/sas/infodigest03/InfoDigest2003.pdf>. Underrepresented minorities include Native American, African American, and Chicano/Latino students.

44. *Id.*

45. *Su. supra* note 38.

46. DIGEST, *supra* note 43, at 15.

47. UNDERGRADUATE ACCESS, *supra* note 33, at 22.

48. *See id.* The 5.7% decline also represents a 27.5% rate of decline from 1995 to 1998 ($5.7/20.8 = 27.5\%$).

49. *Su. supra* note 38.

50. UNDERGRADUATE ACCESS, *supra* note 33, at 19.

minority freshmen out of all freshmen enrolled has decreased on five of eight UC campuses.⁵¹ The two flagship UC campuses, UC Berkeley and UCLA, experienced the steepest declines of underrepresented minority freshmen enrollment, with both campuses experiencing a 56% decrease from 1995 levels.⁵² The latest UC data shows that while the enrollment percentage of underrepresented minorities continues to improve, a substantial gap still exists between current levels and its previous peak at the two most prestigious UC schools.⁵³

The decline in enrollment parallels a similar decline in UC admissions of underrepresented minorities during the same period that has just started to progress beyond its previous peak.⁵⁴ From 1995 to 2002, the percentage of underrepresented minorities admitted to the UC as a whole declined by 2.3%, with all nine UC campuses experiencing declines.⁵⁵ Again, UC Berkeley and UCLA suffered the steepest declines of underrepresented minorities admitted, with decreases of 36.7% and 37.0% respectively from their 1995 levels.⁵⁶ Since then,

51. UNDERGRADUATE ACCESS, *supra* note 33, at 22. The eight UC campuses included in the report were Berkeley, Davis, Irvine, Los Angeles, Riverside, San Diego, Santa Barbara, and Santa Cruz. The three UC campuses that registered increases in underrepresented minority freshman enrollment from 1995 to 2002 are Riverside, San Diego, and Santa Barbara. However, Santa Barbara was the only UC campus to actually experience an increase in underrepresented minority freshman enrollment in 1998, the first year that Proposition 209 formally went into effect. The other seven UC campuses all experienced declines that year. *Id.*

52. *Id.* at 20. The proportion of underrepresented minority enrollments at UC Berkeley in 1995 was 24.3% and 15.6% in 2002. At UCLA, the figures were 30.1% (1995) and 19.3% (2002). *Id.*

53. UNIVERSITY OF CALIFORNIA, OFFICE OF THE PRESIDENT, UNIVERSITY OF CALIFORNIA DISTRIBUTION OF STATEMENT OF INTENT TO REGISTER (SIRS) FOR ADMITTED FRESHMEN FALL 1997 THROUGH 2006 1-2 (May 31, 2006) [hereinafter DISTRIBUTION OF SIRS], available at http://www.ucop.edu/news/factsheets/2006/froshirs_table2.pdf. As of 2006, the enrollment percentage of underrepresented minority freshmen out of all UC freshmen stands at 19.8%. Su, *supra* note 38. The enrollment percentages for UC Berkeley and UCLA both stood at 15.9%. DISTRIBUTION OF SIRS, *supra* note 53. A Statement of Intent to Register (SIR) is filed by an admitted student stating his or her intention to enroll at the school for the upcoming Fall term, with no guarantee that the student will actually enroll, so the actual enrollment figures may be higher or lower.

54. UNDERGRADUATE ACCESS, *supra* note 33, at 15.

55. *Id.* at 19. The percentage of underrepresented minorities admitted to the UC in 1995 was 20.7% and 18.4% in 2002. The decline was most dramatic in 1998, when Proposition 209 formally went into effect in UC admissions and only 15.9% of all UC admitted students were underrepresented minorities. The 2.3% decline also represents an 11.5% rate of decline from 1995 to 2002 ($2.3/20.7 = 11.5\%$).

56. *Id.* The percentage of underrepresented minorities admitted to UC Berkeley in 1995 was 26.1% and 16.5% in 2002. At UCLA, the figures were 26.7% (1995) and

although the overall percentage of underrepresented minority freshmen admitted to the UC has recovered to surpass its historical high in 1995, the percentage of underrepresented minorities admitted compared to the overall number of students admitted into UC Berkeley and UCLA has continued to decline.⁵⁷

B. The Persistence and Graduation Rates of Underrepresented Minorities in the UC System Has Not Improved

Some have asserted that the decline in underrepresented minorities on UC campuses means that those admitted after Proposition 209 went into effect are now as equally qualified and capable as white and Asian American students,⁵⁸ the theory being that affirmative action policies favor diversity at the expense of merit and that more academically qualified students will be more likely to stay in and graduate from college. Assuming that all the underrepresented minority students who entered a UC school after Proposition 209 went into effect had the same qualifications and abilities as the general student population, the persistence and graduation rates for underrepresented minorities should have improved each year following 1998, the first year that Proposition 209 formally went into effect for UC admissions. So far, however, the available data on UC persistence and graduation rates does

16.8% (2002). The percentages have improved from its nadir in 1998, when it was just 11.2% for UC Berkeley and 12.7% for UCLA. The 1998 figures represented a more than 50% rate of decline in the proportion of admitted students who were underrepresented minorities from 1995.

57. UNIVERSITY OF CALIFORNIA, OFFICE OF THE PRESIDENT, UNIVERSITY OF CALIFORNIA STATEMENT OF INTENT TO REGISTER (SIRS) RATES FOR ADMITTED FRESHMEN FALL 1997 THROUGH 2006 1-3 (May 31, 2006) [hereinafter SIRS], available at http://www.ucop.edu/news/factsheets/2006/froschsirs_table3.pdf. As of 2006, the percentage of underrepresented minority freshmen admitted out of all UC freshmen admitted stands at an all-time high of 21.1% compared to 1995 levels. However, the percentage at UC Berkeley stands at 16.2%, relative to 16.5% in 2002, while the percentage at UCLA stands at 14.1%, relative to 16.8% in 2002. *Id.* These percentages are calculated from raw UC data compiled in May 2006, in contrast to the published April 2006 UC data, which has the UC, UC Berkeley, and UCLA percentages at a more favorable 21.7%, 17.4%, and 15.2%, respectively. See UNIVERSITY OF CALIFORNIA, OFFICE OF THE PRESIDENT, UNIVERSITY OF CALIFORNIA DISTRIBUTION OF NEW CALIFORNIA FRESHMEN ADMIT OFFERS FALL 1997 THROUGH 2006 1-2 (Apr. 2006), available at http://www.ucop.edu/news/factsheets/2006/fall_2006_admissions_table_c.pdf.

58. See Eryn Hadley, *Did the Sky Really Fall? Ten Years After California's Proposition 209*, 20 BYU J. PUB. L. 103, 129-30 (2006).

not necessarily support that theory.

First, prior to the passage of Proposition 209, the persistence and graduation rates of most underrepresented minorities in the UC system were already consistently improving,⁵⁹ so any improvement in persistence and graduation rates after its passage could have been a continuation of past progress. Second, the actual available data shows that since Proposition 209's passage, persistence and graduation rates have actually declined for certain underrepresented minority groups.⁶⁰ For instance, the two year persistence rate for African American freshmen admitted to the UC in 1998 was 83.1%, but declined over the next two years to 82.9% and 81.7%.⁶¹ During approximately the same period, the gap between the two year persistence rates for African American freshmen and all UC freshmen widened from 2.2% to 2.7%.⁶² Even if the decline in persistence and graduation rates is arguably negligible, it definitely does not show the expected improvement in the persistence and graduation rates of underrepresented minorities.

The general trends in persistence and graduation rates for underrepresented minorities in the UC system also hold true at the individual campus level. At UC Berkeley, the most prestigious and selective UC school, the gap between the two-year persistence rates for underrepresented minority freshmen and all freshmen at UC Berkeley widened between 1997 and 2003.⁶³ During that period of time, the gap between the two

59. See DIGEST, *supra* note 43, at 64, 67, 69; see also UNIVERSITY OF CALIFORNIA, OFFICE OF THE PRESIDENT, FACTS ABOUT THE UNIVERSITY OF CALIFORNIA (Nov. 2003), available at http://www.ucop.edu/news/factsheets/2003/grad_rates.pdf (announcing that the graduation rates for underrepresented freshmen increased from 56.1% for the entering class of Fall 1986 to 69.1% for those who entered in Fall 1997).

60. DIGEST, *supra* note 43, at 64, 69.

61. *Id.* at 64. Two-year persistence rates for other underrepresented minority groups showed mixed results. The two-year persistence rates for American Indian students fluctuated wildly, dropping from 76.2% for the 1997 freshman cohort to 71.9% for the 1999 freshman cohort, but then shooting up to 82.2% for the 2000 freshman cohort. *Id.* at 65. The two-year persistence rates for Latino students dropped from 82.2% to 80.1% between 1997 and 1998 freshman cohorts, but then increased to 83.8% by 2000. *Id.* at 69.

62. *Id.* at 63-64. In 1997, the two-year persistence rates of African American freshmen and all UC freshmen were 81.8% and 84.0%, a difference of 2.2%. Although the rate difference shrunk to 0.7% in 1998, by the year 2000, it had widened up to 2.7%. *Id.*

63. OFFICE OF STUDENT RESEARCH, UNIVERSITY OF CALIFORNIA, BERKELEY, FRESHMAN TWO-YEAR RETENTION RATES BY DETAILED ETHNICITY, FALL COHORTS,

year persistence rates for Chicano freshmen and all freshmen more than doubled from 0.7% to 1.8%. Similarly, the gap between Latino freshmen and all freshmen surged from 0.6% to 4.6%.⁶⁴ Furthermore, the four, five, and six year graduation rates for underrepresented minority freshmen generally remained steady or improved from 1997 through 2000, while the gap in four, five, and six year graduation rates between underrepresented minority freshmen and all freshmen at UC Berkeley widened dramatically.⁶⁵ For instance, the gaps between four-year graduation rates for African American, Chicano, and Latino freshmen students and all UC Berkeley freshmen in 1997 was 16.8%, 16.3%, and 10.3% respectively.⁶⁶ By 2000, those gaps had increased by 5.6%, 8.6%, and 9.1% respectively, demonstrating that progress by underrepresented minorities lagged far behind improvements made by other ethnic groups.⁶⁷

Ultimately, the data on applications, admissions, and enrollment show that Proposition 209 has hurt underrepresented minority students in the UC and that those who remain continue to lag behind the overall student population in persistence and graduation. The elimination of race as a factor in California's college admissions without addressing inequalities in other socioeconomic factors has increased the weight of those factors affecting academic achievement, a topic that is explored in Section IV below.

C. Without New Race-Neutral Outreach Efforts, the Negative Impact of Proposition 209 Could Have Been Worse

The negative impact of Proposition 209 could have been even worse, were it not for the recent race-neutral outreach efforts that increase educational opportunities for underrepresented minorities. Since the passage of Proposition

available at <https://osr2.berkeley.edu/Public/STUDENT.DATA/ucbret.html> (last accessed Jan. 1, 2008).

64. *Id.* The difference in the two-year persistence rates between African American freshmen and all UC Berkeley freshmen shrank from 2.2% in 1997 to 1.6% in 2003, but the gap in 1998 had jumped to 5.6%. *Id.*

65. OFFICE OF STUDENT RESEARCH, UNIVERSITY OF CALIFORNIA, BERKELEY, 4, 5, 6-YEAR RATES FOR FRESHMEN, available at <http://osr2.berkeley.edu/Public/STUDENT.DATA/ucbdeg.html> (last accessed Mar. 21, 2007).

66. *Id.*

67. *Id.*

209 and the subsequent elimination of “race-conscious” affirmative action policies, the University of California has enacted or strengthened numerous race-neutral strategies “to enhance the academic preparation of UC students and to maintain access for low-income students, those from educationally disadvantaged families and schools, and those from underserved geographical areas of the state.”⁶⁸ These strategies ranged from admissions-based to development-based approaches.⁶⁹

The admissions-based approaches generally involved changes to the application evaluation process, such as the expansion of academic criteria used to evaluate student applicants, increasing the weight of socioeconomic status, and adopting qualitative scoring alongside fixed formulas.⁷⁰ An example of such an approach was the use of “Comprehensive Review,” a process that takes into consideration not only academic achievement but also specific achievements that demonstrate leadership, intellectual ability in a particular field, and socioeconomic factors.⁷¹ In November 2001, the UC Regents adopted the recommendation to end the practice of applying Comprehensive Review to a narrower category of applicants and to expand use of the approach to cover all applicants.⁷²

In comparison, the development-based approaches adopted by the UC focused primarily on the expansion of educational partnership programs between individual UC campuses and K-12 schools.⁷³ The partnership programs encompassed several strategies, including “teacher professional development, curricular reform, educational leadership, mentoring and direct instruction, and technology-based initiatives.”⁷⁴ An example of

68. UNDERGRADUATE ACCESS, *supra* note 33, at 2.

69. *See id.* at 9–11.

70. *Id.* at 8–9. Because socioeconomic status is closely related to race, there is a question of whether socioeconomic status is being used as a proxy for race. Section IV, *infra*, explores how socioeconomic factors influence academic achievement regardless of ethnicity.

71. UNIVERSITY OF CALIFORNIA, OFFICE OF THE PRESIDENT, COMPREHENSIVE REVIEW, <http://www.ucop.edu/news/comprev/welcome.html>.

72. UNDERGRADUATE ACCESS, *supra* note 33, at 12–13. Some have questioned whether the change to admissions criteria is merely substituting socioeconomic factors for race. That question is addressed in Section IV, *infra*.

73. *See id.* at 9–10.

74. *Id.* at 10.

such outreach programs is the Early Academic Outreach Program (EAOP), which targets middle school and high school students with services geared towards preparation for college.⁷⁵ EAOP services include individual academic advising, accelerated academic programs, college entrance exam preparation, financial aid workshops, and arranging student visits to specific UC campuses.⁷⁶

Overall, the UC's new and strengthened race-neutral strategies have yielded positive results for underrepresented minority groups after the setbacks caused by Proposition 209. While the admissions and enrollment rates of underrepresented minority students declined dramatically in 1998, the first year that Proposition 209 went into effect, by 2002, both statistics had improved, although they were still below pre-1998 levels.⁷⁷ Furthermore, the implementation of Comprehensive Review across the board to all UC applicants helped boost racial and ethnic diversity on individual campuses, somewhat mitigating the effect of Proposition 209.⁷⁸

Looking back, at least some of the negative effects predicted by opponents of Proposition 209 have come to pass, even with increased efforts by the UC to address its impact. However, despite being viewed mainly as another obstacle to underrepresented minority students in their struggle for educational progress, Proposition 209 does have an inadvertent redeeming effect. By removing the factor of race from the complex equation of academic achievement, Proposition 209 is forcing society to recognize and address other race-neutral and more important socioeconomic factors—namely wealth, culture, and familial circumstances.

75. UNIVERSITY OF CALIFORNIA, EARLY ACADEMIC OUTREACH PROGRAM, <http://www.eaop.org/welcome.html> (last visited Sept. 22, 2007).

76. *Id.*

77. UNDERGRADUATE ACCESS, *supra* note 33, at 15. The admissions rate for underrepresented minorities in 1998 was 15.9%, and the enrollment rate was just 15.1%. By 2002, the admissions and enrollment rates had risen to 18.4% and 17.4% respectively.

78. *Id.* at 27.

IV. PROPOSITION 209 HAS INDIRECTLY FOCUSED ATTENTION ON HOW SOCIOECONOMIC FACTORS OTHER THAN RACE AFFECT ACADEMIC ACHIEVEMENT

By removing race as a factor, Proposition 209 has revealed the important roles of other socioeconomic factors in academic achievement and advancement. The elimination of a single factor in any environment directly increases the influence of the remaining factors, and in the context of access to public higher education, the proponents of Proposition 209 explicitly reasoned that the elimination of race as a factor would lead to a more equitable system based upon “individual achievement [and] equal opportunity.”⁷⁹ The underlying rationale for favoring past individual academic achievement is that it is an objective measure of a student’s intellectual aptitude and abilities, but it rests on the naïve assumption that everyone has equal access to the resources required to maximize one’s intellectual potential. This reasoning tends to ignore how individual achievement may be influenced by other socioeconomic factors, including race, wealth, culture, and familial circumstances. A closer look at how Asian Americans as a group have fared in the UC system after the passage of Proposition 209 shows that the latter factors are more influential than race in determining academic success, and thus suggests new ways of helping underrepresented minorities maximize their academic potential.

A. As a Group, Asian Americans Have Benefited the Most from the Passage of Proposition 209 and the Elimination of Affirmative Action Policies

In the decade since the passage of Proposition 209, Asian Americans are the most visible beneficiaries of the elimination of race as a factor in public university admissions. During this period, both the number and proportion of Asian American students have increased within the UC system.⁸⁰ In 2005, Asian American students constituted just over 35.2% of the overall number of students in the UC.⁸¹ Excluding graduate

79. Wilson et al., *supra* note 8.

80. See Su, *supra* note 38.

81. UNIVERSITY OF CALIFORNIA, OFFICE OF THE PRESIDENT, THE UNIVERSITY OF CALIFORNIA STATISTICAL SUMMARY OF STUDENTS AND STAFF FALL 2005, at 27, *available*

students, the proportion is even greater, with over 38.9% of all undergraduate UC students being of Asian descent.⁸² The dramatic rise in percentage is fueled by the equally dramatic rise in the proportion of Asian American students admitted as freshmen to the UC.⁸³ Although Asian Americans make up only 14.1% of California's 2005 high school graduating class, Asian Americans comprised 41.8% of freshmen at all UC campuses, up from 36% just a decade ago.⁸⁴

The rising presence of Asian American students has manifested itself across all UC campuses, and most dramatically at the most selective and prestigious UC schools. Asian undergraduates currently constitute "the largest racial group at seven of the nine UC undergraduate campuses."⁸⁵ At UC Irvine, Asian American students make up 51%, or a majority, of all undergraduate students.⁸⁶ At UCLA, the percentage of Asians among all newly enrolled freshmen in 1996 was 36.4%.⁸⁷ By 2005, the percentage had risen to 40%, raising the overall proportion of Asian American students to the general student population to 38%.⁸⁸ At UC Berkeley, the proportion of Asian undergraduates to all undergraduate students in 1996 was already over 39.5%.⁸⁹ A decade later, in

at <http://www.ucop.edu/ucophome/uwnews/stat/statsum/fall2005/statsumm2005.pdf>. The overall percentage includes both undergraduate and graduate students, and includes Chinese, Korean, Japanese, Filipino, Pakistani/East Indian, and other Asian students.

82. *Id.*

83. *See* Su, *supra* note 38.

84. *Id.* The percentage includes all Asians from California, other states, and foreign countries.

85. *Id.*

86. *Id.*

87. UNIVERSITY OF CALIFORNIA, OFFICE OF THE PRESIDENT, UNIVERSITY OF CALIFORNIA APPLICATION, ADMISSION AND ENROLLMENT OF CALIFORNIA RESIDENT FRESHMEN FOR FALL 1995 THROUGH 2005, at 3 [hereinafter APPLICATION, ADMISSION, AND ENROLLMENT], available at http://www.ucop.edu/news/factsheets/Flowfrc_9506.pdf (last accessed Mar. 28, 2007).

88. OFFICE OF ANALYSIS AND INFORMATION MANAGEMENT, UNIVERSITY OF CALIFORNIA, LOS ANGELES, UNDERGRADUATE PROFILE FALL 2005, at 1, 3, available at http://www.aim.ucla.edu/home/Undergraduate_Profile_Fall_2005.pdf (last accessed Mar. 28, 2007).

89. OFFICE OF STUDENT RESEARCH, UNIVERSITY OF CALIFORNIA, BERKELEY, UNDERGRADUATE STATISTICS, FALL 1996, TABLE 3: ALL UNDERGRADUATES BY CLASS LEVEL BY ETHNICITY, FALL 1996, available at <https://osr2.berkeley.edu/Public/STUDENT.DATA/PUBLICATIONS/UG/ugf96.html#table%203> (last accessed Mar. 28, 2007).

2006, the percentage had risen to over 41.3%.⁹⁰

B. Other Socioeconomic Factors Outweigh Race in Determining Academic Achievement

Even prior to the passage of Proposition 209, Asian Americans already possessed an impressive track record of academic achievement relative to other minority groups. In 1996, the percentage of Asian American high school graduates who were UC eligible was more than ten times the eligibility rate for African Americans and more than seven times the eligibility rate for Chicano/Latino students.⁹¹ It was even more than twice the rate for Caucasian students.⁹² Similarly, Asian American students were admitted to the UC and enrolled at higher rates than all other minority groups.⁹³ Upon enrollment, the persistence and graduation rates of Asian American students were also consistently among the highest of all ethnic groups.⁹⁴ Thus, there was little surprise that the passage of Proposition 209 and the elimination of race as a consideration in California public university admissions would benefit Asian Americans.

The academic success of Asian Americans has received much attention over the years and has been the subject of controversy in the debate over affirmative action. Much of the debate has focused on how affirmative action policies favoring underrepresented minorities negatively affect Asian Americans, as opposed to a purely merit-based system, which would likely have the opposite effect.⁹⁵ The stereotype of Asians as a “model minority” to be emulated by other minority

90. OFFICE OF STUDENT RESEARCH, UNIVERSITY OF CALIFORNIA, BERKELEY, UNDERGRADUATE STATISTICS, FALL 2006, TABLE 3: ALL UNDERGRADUATES BY CLASS LEVEL BY ETHNICITY, FALL 2006, available at <https://osr2.berkeley.edu/Public/STUDENT.DATA/PUBLICATIONS/UG/ugf06.html#table%203> (last accessed Mar. 28, 2007).

91. UNDERGRADUATE ACCESS, *supra* note 33, at 4. In 1996, the proportion of African American high school graduates who were eligible for admission to the UC was 2.8%. The same rate for Chicano/Latino students was 3.8%. The rate for Asian American students was 30.0%. *Id.*

92. *Id.* In 1996, the proportion of Caucasian high school graduates eligible for admission to the UC was 12.7%.

93. See APPLICATION, ADMISSION AND ENROLLMENT, *supra* note 87.

94. See DIGEST, *supra* note 43, at 63–70.

95. See generally Thomas J. Espenshade & Chang Y. Chung, *The Opportunity Cost of Admission Preferences at Elite Universities*, 86 SOC. SCI. Q. 293 (2005), available at <http://opr.princeton.edu/faculty/tje/espenshadessqptii.pdf>.

groups, especially underrepresented minorities, obscures the underlying socioeconomic factors of academic achievement. Using the success of Asian Americans in the academic arena to call for the elimination of affirmative action policies without exploring and emphasizing the socioeconomic factors contributing to their achievements ultimately does not benefit, but rather hurts, the interests of underrepresented minorities. A closer look at the socioeconomic factors contributing to the academic success of Asian Americans reveals that these same socioeconomic attributes play important roles in the academic success of students across all ethnic groups.

A study on UC eligibility by ethnicity of California high school graduates shows that Asian Americans in California are well-positioned both culturally and economically to succeed in academics. In Asian cultures, scholarship is revered, and being educated is a source of familial pride.⁹⁶ Furthermore, California's Asian American population tends to be well educated relative to the general population, and is well-positioned economically to afford educational advantages for their children.⁹⁷ According to the latest census data, the percentage of Californian Asian Americans with at least a bachelor's degree was 40.9%, the highest percentage among all ethnic groups in California.⁹⁸ Furthermore, California's Asian Americans have a significantly higher median household income than the overall median household income.⁹⁹ However, these socioeconomic advantages are not unique to Asian Americans.

The advantages of higher income and a cultural emphasis on education translate into academic success across all ethnic groups. Household distributions by income show that a disproportionate number of UC admits come from the highest income bracket.¹⁰⁰ In 2004, nearly one third of all UC

96. Timothy Egan, *Little Asia on the Hill*, N.Y. TIMES, Jan. 7, 2007, § 4A, (Education and Life Supplement) at 24 ("In Asian families, the No. 1 job of a child is to be a student. Being educated—that's the most honorable thing you can do.").

97. See UNDERGRADUATE ACCESS, *supra* note 33, at 4.

98. *Id.*

99. *Id.* In 2000, the median household income of Asian Americans in California was \$61,383, compared to \$53,025 for all California households. *Id.*

100. David Stern, Michael T. Brown, Mark Rashid & Trish Stoddart, UC "Eligibility": The Quest for Excellence and Diversity 36 (Oct. 27, 2006) (unpublished draft, on file with the University of California Berkeley Chief Justice Earl Warren Institute on Race, Ethnicity, and Diversity).

California resident freshman admits came from a family with a household income of over \$100,000, while only 22% of all California households with children age 5-18 have household incomes of over \$100,000.¹⁰¹ Overall, 55% of all UC California resident freshman admits came from families with a household income of over \$60,000, compared to 47% for all California households with children age 5-18.¹⁰² The same pattern of household distributions by income repeats across all major ethnic groups, including African Americans, Asian Americans, Native Americans, Hispanics, and whites.¹⁰³ The income disparity translates directly into tangible educational advantages, including better schools, instruction, and materials, as well as access to more advanced curriculum and tutoring for those with higher incomes, regardless of race or ethnicity.

Similarly, an examination of household distributions by parent's highest level of education also reveals that a disproportionate number of UC admits come from families where the parents engaged in post-graduate study compared to the general state population.¹⁰⁴ While only 16% of households with children age 5-18 have a parent who engaged in post-graduate study, a full 39% of UC California resident freshman admits came from a family with a parent that had engaged in post-graduate studies.¹⁰⁵ The same pattern holds true for both underrepresented minority groups and non-underrepresented minority groups.¹⁰⁶ Over one-third of UC admits who were underrepresented minorities and nearly three quarters of non-underrepresented minorities came from families where at least one parent had four years of college.¹⁰⁷ Research has shown that parent education levels are correlated to parental self-efficacy, which in turn had a significant positive correlation with children's academic abilities.¹⁰⁸ Advanced educations are

101. *Id.* at 37.

102. *Id.*

103. *See id.* at 37-39.

104. *Id.* at 36, 40.

105. *Id.* at 40.

106. *Id.*

107. *Id.*

108. *See* Carol Seefeldt, Kristin Denton, Alice Galper & Tina Younoszai, *The Relation Between Head Start Parents' Participation in a Transition Demonstration, Education, Efficacy and Their Children's Academic Abilities*, 14 EARLY CHILDHOOD RES. Q. 99-109 (1999).

generally associated with higher earnings, which, as described above, confer additional educational opportunities and advantages.

C. Despite Possible Drawbacks and Criticisms, Socioeconomic Indicators Should Serve a Valuable Role in the College Admissions Process

Criticism of the use of socioeconomic factors in college admissions does exist. Some critics suspect that colleges are using socioeconomic factors as a proxy for race to circumvent the ban on affirmative action promulgated by Proposition 209.¹⁰⁹ However, even the original proponents of Proposition 209 explicitly recognized that “Proposition 209 doesn’t prohibit consideration of economic disadvantage.”¹¹⁰ Moreover, by equating socioeconomic disadvantage with underrepresented minorities, the same critics seem to implicitly acknowledge the criticism that the current system is unfair and denies equal opportunity to underrepresented minority students. Another major pitfall in the application of socioeconomic factors is the potential for granting socioeconomic status too much weight in the admissions process, and thus denying an opportunity to legitimately qualified students. In practice, colleges should evaluate socioeconomic status as a complement to academic performance.

In the end, academic achievement should still be the predominant factor in the admission process, with socioeconomic factors serving as an interpretive context for insight and understanding into a student’s academic abilities and potential. As the recent study on UC eligibility shows, a direct correlation exists between certain socioeconomic advantages and academic success, regardless of race or ethnicity,¹¹¹ and justifies the new strategy of focusing on socioeconomic backgrounds in outreach programs and the admissions process. Furthermore, by identifying the socioeconomic factors most closely related to academic success,

109. See Rebecca Trounson, Richard Paddock & Angie Green, *More Black Students Admitted to UCLA*, L.A. TIMES, Apr. 5, 2007, available at <http://www.latimes.com/news/local/la-me-admit6apr06.0,3422808.story?coll=la-home-headlines>.

110. Daniel E. Lungren, Quentin L. Kopp & Gail L. Heriot, *Rebuttal to Argument Against Proposition 209*, in CALIFORNIA BALLOT PAMPHLET, GENERAL ELECTION (Nov. 5, 1996), available at <http://vote96.sos.ca.gov/BP/209norbt.htm>.

111. See generally *id.*

colleges can evaluate an individual's academic achievement relative to those of others within the same socioeconomic context. Then, instead of just "measuring in a fair way the results of an unfair system,"¹¹² comparing the relative performance of students within the same peer group provides colleges a more accurate depiction of a student's academic abilities and helps to identify students with promising but latent academic abilities. In this manner, the use of socioeconomic factors will more closely approximate the ideal of providing equal opportunity for all students.

V. CONCLUSION

The role of race and the benefits of diversity in higher education will continue to be part of a vigorous public debate in the future. As more states consider legislative changes to eliminate affirmative action policies favoring ethnic minorities, the impact of Proposition 209 on UC admissions and enrollment and the University's response will serve as a useful guide. In many ways, Proposition 209 has damaged the educational interests of traditionally underrepresented minorities in relation to higher education, but it has also had an indirect positive impact. By eliminating race from the debate, Proposition 209 has helped focus attention on how other socioeconomic factors are even more important to determining academic success. Hopefully, that focused attention on other socioeconomic factors will encourage efforts to eliminate inequalities in this area so that a more balanced system will emerge; thereby everyone, regardless of race or ethnicity, will have the same opportunities to maximize their academic potential.

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112. Egan, *supra* note 96.