

HOW THE UNIVERSITY OF CALIFORNIA BOARD OF REGENTS RESCINDED ITS BAN ON AFFIRMATIVE ACTION IN 2001: A Personal Account

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ABSTRACT

This case study is a personal account of decision-making and governance at the University of California. It describes how the University's educational policy aspirations and the political salience of the issues involved led the Regents of the University of California on May 16, 2001 to unanimously rescind their 1995 prohibition on the use of race, ethnicity, or gender in undergraduate admissions, employment, and contracting.

Keywords: Affirmative Action, University Admissions, Higher Education Politics

This case study is a personal account of decision-making and governance at the University of California (UC). It describes how the University's educational policy aspirations and the political salience of the issues involved led the Regents of the University of California on May 16, 2001 to unanimously rescind their 1995 prohibition on the use of race, ethnicity, or gender in undergraduate admissions, employment, and contracting. As Senior Vice President of the University, I sought to help the Regents, the administration, and the faculty find a solution to a challenge that had consumed the University for the prior six years.

A public university is a powerful force for upward social mobility and positive social change. As a consequence, its decisions have broad societal implications of acute interest to elected officials who want to ensure that all Californians have the opportunity through their hard work and scholastic achievement to receive a UC education. This paper illustrates how the University of California managed the confluence of divergent interests in educational policy, public policy, and politics that governed the use of affirmative action in admissions. Affirmative action remains as salient an issue in 2020 as it was in 2001 and 1995.

Earlier this year the California Legislature passed Assembly Constitutional Amendment 5, which appears on the November 2020 California ballot as Proposition 16. It will ask California voters to repeal Proposition 209, the State Constitutional Amendment that barred affirmative action in public university admissions and other realms of public life. In 1995, the Regents adopted Special Policy 1 to prohibit the use of affirmative action in admissions and Special Policy 2 to prohibit its use in employment and contracting. This paper will focus on the ban on affirmative action in undergraduate admissions.

The Regents' Special Policies known as SP-1 and SP-2 were proposed by Regent Ward Connerly, who believed UC's affirmative action practices discriminated based on race, ethnicity, gender, national origin, and other demographic attributes. He came to this conclusion after he was presented with evidence that some white applicants were declined admission to the University of California while some African American and Latino applicants with lower grade point averages (GPA) and entrance examination scores were admitted. Some political observers have suggested that Regent Connerly's and Governor Pete Wilson's efforts to bar the use of

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affirmative action in state-funded programs was an attempt to galvanize public opinion in support of Governor Wilson's ambitions for higher political office, since in 1996 Governor Wilson briefly sought the Republican nomination for President of the United States. In November of 1996, California voters passed Proposition 209, which incorporated into the California Constitution the Regents' ban on affirmative action in university admissions and public employment and contracting. In doing so, the voters made the 1995 Regents' Special Policies banning affirmative action California law.

By the spring of 2001, significant changes had occurred since the Regents passed SP-1 and SP-2 in 1995. In 1999, Gray Davis, a Democrat, had succeeded Pete Wilson, a Republican, as governor. With encouragement and financial support from Governor Wilson and particularly Governor Davis, UC launched the nation's most ambitious educational outreach programs in partnership with California's public schools. Public school students were underperforming on a range of national educational measures, particularly compared to prior decades. California faced a massive shortage of K-12 teachers, especially in mathematics, the sciences, and other subjects required for admission to the University of California and the California State University. UC's new educational outreach programs sought to raise the quality and rigor of public education as well as the college-readiness of public high school students throughout the state. One program provided teacher training led by master teachers to thousands of K-12 teachers, to deepen their mastery of the subjects they taught and strengthen their pedagogical skills.

The Regents' 1995 approval of SP-1 revoked the faculty's responsibility to recommend UC admissions standards, a responsibility delegated to the faculty 80 years earlier. SP-1 required that 50 to 75 percent of first-year students be admitted solely on the basis of their high school GPA and SAT I scores. This provision reduced the University's ability to use other comprehensive review criteria in place of affirmative action in admissions decisions.

In March of 2001, the media inquired how the Regents would vote if a resolution were introduced to rescind SP-1 and SP-2. Lieutenant Governor Cruz Bustamante, an ex officio Regent, and Student Regent Justin Fong had promised to repeal SP-1 and SP-2 at that month's Regents' meeting. It appeared that 10 Regents would vote to repeal SP-1 and SP-2, while nine would vote to reaffirm them. Three Regents wanted to hear a full discussion of the issue before deciding. Two of the 10 Regents inclined to repeal SP-1 and SP-2 were not firmly committed to the repeal. They did not want to divide the Board of Regents over this issue, and they did not want to deliver a defeat to Regent Ward Connerly. Years earlier, Regent Connerly had persuaded the Regents to adopt SP-1 and SP-2 in 1995 by a vote of 14-10 with one abstention. Although the outcome of a vote in March was uncertain, it appeared the Regents would reaffirm their 1995 actions by a narrow margin.

There are 26 Regents, most of whom are appointed by the Governor and confirmed by the California Senate. Twenty-two votes would be cast at the March 2001 Regents meeting because Governor Davis, an ex officio Regent, was not expected to attend and there were three vacancies on the Board. UC President Richard Atkinson had long been opposed to SP-1 and SP-2, and he expected the repeal to pass by a wide margin. When I told him the Regents' views, he was incredulous. If my projection were correct, the only way to modify or rescind SP-1 and SP-2 would be to work with Regent Connerly to gain his support. Although President Atkinson doubted my projection, he nonetheless encouraged me to work with Regent Connerly.

As the March Regents meeting approached, SP-1 and SP-2 did not appear on the agenda. Would a Regent introduce a resolution to repeal them anyway? If so, the matter would not be discussed until the May meeting because California's public meeting law (the Bagley-Keene Act) requires that advance notice be provided to the public before an agenda item is voted on by the Regents. At the March Regents meeting, student and community leaders rallied to demand an immediate vote. Five thousand people gathered at UCLA to witness the repeal of SP-1 and SP-2. When they learned that Lt. Governor Bustamante and Student Regent Fong had neglected to ask that the topic be placed on the meeting agenda, they exploded. Loud and insistent voices denounced them for not living up to their word. They were booed repeatedly as speakers attacked them with vituperative remarks during the public comment period that opened the Regents' meeting. Threats of violence were made against the Regents because thousands of people had driven to UCLA from across the state and learned only upon arriving that the Regents would not repeal SP-1 and SP-2 at that meeting.

The divisiveness of the issue and the contentiousness of the meeting demanded a solution. Regent Judith Hopkinson wanted to form a coalition of Regents to repeal SP-1 and SP-2. However, she knew the projected outcome of a vote and decided it would be unwise to pursue this course. She did not want the Board to reaffirm SP-1 and SP-2, or have a split vote send an inconclusive message about the value of affirmative action. I began drafting a resolution and asked Regent Connerly to join me in uniting the Regents to repeal SP-1 and SP-2. Regent Connerly knew that President Atkinson wanted to repeal both policies and remained confident the Regents would defeat any such effort. He said I was embarking on a foolish venture. However, if I did not mind failing in a very public manner, he would not stand in my way. Later, President Atkinson, Regent Hopkinson and I asked Regent Connerly if he would work with us. After a lively, provocative, and extended discussion, Regent Connerly nodded and said he would.

The Friday after the March Regents meeting, Regent Connerly wrote a long e-mail message about our conversation and attached his version of a resolution. Separately, Regent John Moores sent his version of a resolution. Both resolutions repealed certain sections of SP-1 and SP-2 while leaving other sections intact. Neither resolution would resolve the longstanding division within the Board over these policies. On Sunday, President Atkinson, the Chancellors and I flew to Washington, D.C. for meetings at the White House and in Congress about the University's federal policy agenda. Upon our return, we received another e-mail from Regent Connerly asking if we were serious about our plan. If not, he would be happy to let SP-1 and SP-2 stand.

During the March Regents meeting, the Regents had offered me their views about SP-1 and SP-2. Regent Connerly's and Regent Moores' resolutions did not address their concerns. Further, since their resolutions repealed certain sections and not others, the Regents would have difficulty understanding what was being proposed. It would require the type of careful examination of documents used in legislative bill analysis. Each Regent would need to place SP-1 and SP-2 alongside the two repeal resolutions and read each section of the documents to determine what would remain in effect and what would change. After six years, most Regents were no longer well-versed in the provisions of SP-1 and SP-2. Other Regents had been appointed since 1995 and were not familiar with the issues. The media and the public would find Regent Connerly's and Regent Moores' resolutions too complex and difficult to understand for the same reasons. By contrast, my resolution was a free-standing document that could be read and understood independently of SP-1 and SP-2. This would enable everyone to understand what the Regents were approving.

I described to Regent Connerly why it would be consistent with his views to repeal both policies. He immediately and vigorously disagreed. He was very clear and very firm that he would not repeal, eliminate, or in any other way undo SP-1 and SP-2. In actuality, Regent Connerly had already prevailed. SP-1 and SP-2 became law when the voters approved Proposition 209, thereby prohibiting the use of race, ethnicity, gender, national origin, and related factors in admissions, contracting, and employment by any State entity. The Regents could not change this. At the same time, SP-1 and SP-2 had become code words used to verbally pummel the University at meeting after meeting of the Regents. Why, therefore, would Regent Connerly object to repealing SP-1 and SP-2 now that the State Constitution was the defining legal authority on the subject? Additionally, as the terms of Governor Wilson's appointed Regents came to an end and Governor Davis appointed new Regents to succeed them (there were three Board vacancies awaiting his nominations and there would be two additional vacancies in less than a year), the composition and tenor of the Board of Regents would be transformed. Soon thereafter, the Board would repeal SP-1 and SP-2. So why, rather than face defeat in a few years' time, would Regent Connerly not agree to eliminate SP-1 and SP-2 now? If he did so, he would be a partner in the outcome. If the repeal happened later, it would be a personal and policy defeat for him. Since Proposition 209 remained in effect, he would lose nothing by repealing both policies now. Regent Connerly said he had not thought about it this way and, yes, he would join us.

My resolution included these elements:

1. The Regents had and would continue to abide by Article 1, Section 31 of the State Constitution (the section that incorporated Proposition 209 as well as SP-1 and SP-2);
2. It was the University's longstanding policy, as restated in SP-1, to seek out a diverse student body. In adopting the resolution, the Regents would reaffirm their commitment to enroll students who demonstrated high academic achievement, exceptional personal talent, and who were broadly representative of the geographic, racial, socio-economic, and other characteristics of California;
3. The Regents would make a long-term commitment to educational outreach programs with California's elementary and secondary schools to provide a more rigorous K-12 education and better prepare students for college; and
4. The Regents would reaffirm their commitment to a robust transfer program from California's community colleges so that students with an associate of arts degree and the qualifications to enroll could complete an upper division education at the University of California.

I encouraged Regent Connerly to focus on the goals we all shared rather than on the divisiveness of the past. My resolution would articulate these goals so that the Regents could look forward and work together to achieve a positive and unifying purpose. That would be the easy part. The hard part would be to articulate what should be said about SP-1 and SP-2. He agreed.

My first draft had several "whereas" clauses that said:

"Whereas in July 1995, the Regents adopted SP-1 and SP-2 which prohibited the use of racial, ethnic, and gender preferences in admissions, employment, and contracting,"

"Whereas in November 1996, the voters of California approved Proposition 209, thereby incorporating the major principles of SP-1 and SP-2 into the California Constitution as Article 1, Section 31," and

"Whereas a number of people have perceived that, in doing so, the Regents were sending a signal that underrepresented minorities were no longer welcome at the University."

Then I wrote, "Now therefore, be it resolved, that..." and I summarized the positive points, described above, that the Regents would adopt in the resolution.

My resolution concluded, "In view of having affirmed these goals, the Regents hereby replace SP-1 and SP-2 with this resolution which shall guide the University's programs going forward."

I purposely used the neutral word "replace" instead of "repeal" or "rescind," which Regent Connerly opposed. President Atkinson said he could live with the first draft, although he wanted the resolution to go much further. Regent Connerly edited the draft, as did his wife Ilene. They were excellent editors. After proposing their changes, Regent Connerly called to offer additional revisions. He wanted to insert an additional "whereas" clause that said, "Whereas some students have expressed pride in knowing that, since the adoption of SP-1, they were admitted to the University based on their own accomplishments," which meant without affirmative action.

He wanted to add as well that students had "discovered the full educational treasures of all the campuses" to deflect the criticism that they were being denied admission to Berkeley and UCLA, the most selective campuses.

In the years since the Regents adopted SP-1, the opponents were anguished that underrepresented students were being denied admission to Berkeley and UCLA while being admitted to less selective campuses. Regent Connerly's justification for the new clauses was that several Chancellors told him their students made these comments. I made the case against adding these clauses on the grounds that they were too inflammatory. They would generate widespread public opposition, making it difficult for the Regents to adopt the resolution. Regent Connerly insisted that they be included. After a lengthy discussion in which I made no headway, I acquiesced with deep reluctance. At this point I began calling Regents to let them know that their observations in March led me to draft a resolution that Regent Connerly, Regent Hopkinson, and I thought the Regents might support. The Regents were surprised.

Regent William Bagley (author of the Bagley-Keene Act while he was a member of the California Legislature) and James Holst, the University's General Counsel, offered advice about the Bagley-Keene Act. The law prohibits "serial meetings," in which one calls Regents to gain their support for a proposal to be considered at a later Regents' meeting. Such calls would make the subsequent public meeting a mere formality during which the Regents would vote publicly to adopt what had already been agreed upon privately. Regent Connerly was very attentive to the Bagley-Keene Act because he had been sued in 1995, along with Governor Wilson and the Regents, by Tim Malloy, editor of the UC Santa Barbara student newspaper. Mr. Malloy said Regent Connerly had conducted serial meetings with the Regents in advance of their 1995 vote to adopt SP-1 and SP-2. Regent Connerly had done so, Mr. Malloy asserted, to assure Governor Wilson that there were enough votes to pass SP-1 and SP-2 before placing them on the Regents' agenda. I believe Mr. Malloy lost the case, but it reminded everyone to scrupulously follow the law. General Counsel Holst encouraged my conversations with the Regents provided that my calls were solely to inform them about the actions I was taking and to explain my resolution in broad terms. He said I should not give them the resolution in advance, I should not ask their opinion about it, and I should not ask how they would vote on the resolution.

One of the reasons Regent Connerly was willing to support my resolution was the use of the term "replace" instead of "rescind." He thought of SP-1 and SP-2 as a binary matter: the policies were either in effect or they were not, and the Regents would either "reaffirm" SP-1 and SP-2 or they would "revoke" them. He supported my use of the neutral term "replace" because SP-1 and SP-2 would remain in effect due to Proposition 209. He did not want to appear to be undoing what he accomplished in 1995.

Regent Tom Sayles was, like Regent Connerly, an appointee of Governor Wilson. However, Regent Sayles had voted against SP-1 and SP-2. He was not satisfied with the language in the resolution. He wanted an outright repeal of SP-1 and SP-2, and he believed the Regents would do so. When I explained the likely vote, he remained undeterred. However, most of the Regents were comforted that there might be a way to eliminate SP-1 and SP-2 without dividing the Board.

I began revising my resolution because President Atkinson remained concerned that it would not satisfy the Legislature or the African-American and Latino communities. Although the resolution might satisfy the Regents, it would leave the University just as

vulnerable to public and political criticism as if the Regents had taken the extraordinary step of reaffirming SP-1 and SP-2. As I was revising the resolution, Assemblyman Marco Firebaugh called President Atkinson. I joined their call. Mr. Firebaugh disliked the resolution and said it was equivalent to Proposition 187. Proposition 187 prevented illegal immigrants from receiving government services in California. It prohibited illegal immigrants from attending public school, from receiving health and welfare benefits, and from receiving emergency services. Mr. Firebaugh's comparison of the resolution with Proposition 187 pierced my heart.

Assemblyman Firebaugh wanted three things: an outright "repeal" of SP-1 and SP-2; to move the "repeal" clause from the end of the resolution to the beginning; and to eliminate the admissions provision in SP-1 that 50 to 75 percent of first-year students should be admitted solely on their high school GPAs and SAT I scores. Finally, he wanted to remove the "whereas" clause that Regent Connerly inserted saying that "students had expressed pride in being admitted to a UC campus based on their accomplishments." Mr. Firebaugh said it was a racist, anti-affirmative action statement. I asked him a series of questions to better understand his comments: What if "replace" was changed to "supersede?" What if the statement "Now therefore be it resolved that the Regents hereby supersede SP-1 and SP-2" was moved to the beginning of the resolution? I shared his views about some of the wording in the resolution, so I incorporated many of his points. That afternoon I discussed the revisions with Regent Hopkinson, who welcomed them. Regent Connerly, however, would not agree to delete the "whereas" clause Mr. Firebaugh found objectionable. Regent Connerly did accept the word "supersede" instead of "replace" and agreed to move the "Now therefore, be it resolved" clause to the beginning of the resolution. I changed the title to "Resolution to Supersede SP-1 and SP-2," and accommodated, as best I could, Mr. Firebaugh's concerns. On Monday, May 14, Version #2 of the resolution was faxed to the Regents and the media as required by the Bagley-Keene Act.

The first version of the resolution "replaced" SP-1 and SP-2. Version #2 would "supersede" SP-1 and SP-2 and alter some clauses. The Oxford English Dictionary definitions of repeal, revoke, rescind, replace, and supersede have similar meanings, but each word carries a different emotional charge for readers.

On Tuesday morning, May 15, an article in the Sacramento Bee written by higher education reporter Terry Hardy quoted Regent Connerly as saying he had authored the resolution. He said he was recommending the resolution to the Regents because the timing was right and it would not restore affirmative action. Regent Connerly felt the need to explain publicly why he was supporting the resolution so his supporters would not conclude that the resolution was a defeat or that he had changed his beliefs. We were comfortable with Regent Connerly's earlier statements to the press but were surprised that he claimed authorship of the resolution. Members of the Legislature immediately called to say they opposed any resolution authored by Regent Connerly. Since Regent Connerly was the author of SP-1 and SP-2, any resolution he authored to repeal SP-1 and SP-2 was unacceptable to them.

Everything seemed to fall apart. President Atkinson was distraught. His worst fear was being realized: the community that we hoped would value the resolution was opposed to it. He worried that Legislators would express their displeasure by cutting the University's budget. Speaker of the Assembly Robert Hertzberg, an ex officio Regent, called to say Regent Connerly's newspaper comments were incendiary. The prior year the Legislature had tried to cut \$300 million from UC's state-funded budget but, as Speaker, Mr. Hertzberg was able to restore it. This year, the furor over Regent Connerly's claim to be the author of the resolution made it impossible for the Speaker to restore cuts to the University's budget.

President Atkinson's view was that we should abandon Version #2 and introduce a more aggressive resolution to abolish SP-1 and SP-2 without informing the Regents in advance. I reminded him that Version #2 had been sent to the Board as his recommendation. If we were to abandon Version #2, it would be a breach of trust with the Regents. I would not be a party to it. A lively discussion ensued. He called Regent Hopkinson and asked her to withdraw Version #2. She refused. After re-drafting the resolution a few days earlier, I had called the Regents to inform them about the changes so that they would not be surprised. Most of the Regents were comfortable with the changes. The Regent who expressed the greatest concern was the Chair of the Regents, Sue Johnson. She began calling her fellow Regents to persuade them we should not use the word "supersede." She advocated staying with "replace" from the original resolution. Regent Johnson complained that we were buckling to Legislators, which would encourage them to ask for more and more.

That weekend my son was competing in a Bay Area Tae Kwon Do championship. Between his bouts, I called Regents. When we returned home, Regent Johnson called to say she had spoken to former UC President David Gardner and several Regents. She was unaware that I had spoken with President Gardner earlier that week and that he was very supportive of Version #2. He appreciated the resolution's reference to an admissions policy he had written in 1988, which said UC should seek out and enroll students who displayed exceptional academic and personal talents and who reflected the broad diversity of California's population. President Gardner told Regent Johnson we were on the right track. He did not understand why she was concerned with the use of the word "repeal" versus "replace" or "supersede." The Regents told Regent Johnson they supported the revisions made following

the telephone call with Assemblyman Firebaugh. Regent Johnson called the next morning to say she would support the revised resolution — against her better judgment — because no Regent supported her position.

President Atkinson's hand-written version of the resolution used the word "supersede" and included the six positive statements that were in my resolution. It deleted Regent Connerly's offensive "whereas" clause and synopsis of the other clauses. It was a fine resolution. The challenge it presented was that the Regents supported Version #2. President Atkinson said he would introduce his resolution as a substitute motion and that he would not inform the Regents in advance. I said I wanted no part in introducing his resolution in this manner. My concern was not driven by pride of authorship. It was a matter of trust with the Regents. It would be unconscionable to do what he was suggesting after we had worked with the Regents so conscientiously in drafting the first two versions of the resolution.

Instead, I proposed that I inform the Regents about his substitute resolution so they would not be surprised when he proposed it. Our discussion was never heated, and it was never personal. We each made our case with passion, but President Atkinson remained firm in his position. Finally, to break the stalemate, I gave him a draft of the resolution as I would have written it based on my personal values and preferred language. This new version, Version #3, would say at the beginning of the resolution that it was a "rescission" of SP-1 and SP-2. It would delete Regent Connerly's "whereas" clause saying students had expressed pride in being admitted to a UC campus based on their own accomplishments. In addition, I offered to revise President Atkinson's version so he could introduce it at the Regents' meeting. After all, it was his prerogative as President to propose his own version of the resolution, but it would be best to do so after sharing it with the Regents. We agreed that if the Regents did not like Version #3, he would introduce his resolution during the Regents meeting.

Version #3 included one additional "whereas" clause saying the President had asked the Academic Senate to review the conditions for admission to the University, including the use of the SAT I entrance examination. The Academic Senate was expected to complete its review by the end of 2001 or early 2002. In the section "Now therefore, be it resolved" Version #3 would say "pending any changes" the Regents are rescinding SP-1 and SP-2 along with the requirement that 50 to 75 percent of first-year students be admitted solely on their high school GPAs and SAT I scores. It said, however, that until the Regents approve any changes recommended by the Academic Senate and the President, the 50 to 75 percent requirement would remain in place. Michael Cowan, Chair of the Academic Senate, said the Senate committee revising the admissions criteria would meet that timetable with ease.

The discussion with President Atkinson moved things forward in a positive way. We both preferred Version #3. While he preferred his version because it was more succinct, he said to go ahead with my Version #3. Regent Hopkinson was fine with it but said Regent Connerly would never accept it. I prepared two copies of Version #3 to use when calling Regent Connerly. There were minor differences: one used the word "rescind" while the other used the word "eliminate." President Atkinson wanted Regent Hopkinson to recommend Version #3 to Regent Connerly, but she declined. We called Ward. His quotes in the Sacramento Bee had undercut his position and made Version #2 untenable. I repeated what the Speaker and others had told us: Regent Connerly's claim that he was the resolution's author meant it was no longer credible. The consequences of his claim were severe. The University's salary budget had been zeroed-out by a Legislative committee, all of the University's one-time funding had been eliminated, and the capital outlay budget would be reduced dramatically. Assembly Speaker Hertzberg asked us to delay the Regents' action on the resolution until after the budget had been approved by the Legislature to avoid this outcome.

We could not delay the Regents' vote because May would be the last meeting for Student Regent Fong, who would put the topic on the agenda as his final act. Furthermore, the political context would worsen with a two-month delay. Since we had already put the resolution on the agenda, if we failed to act on it, the Regents would be excoriated for raising public expectations and then dashing them. I did not want the Regents and the University to suffer the consequences of delaying the vote.

I read Version #3 to Regent Connerly. He did not like it. He asked me to fax it to his office and called 15 minutes later to underscore his distaste for Version #3. He objected to the Legislators' demands and said the Regents should vote on Version #2. He did not believe the Legislature would cut the University's budget and he welcomed a showdown to call their bluff. My responsibilities were different than his. My first obligation was to bring the Regents together on this issue. We had done that with the first two versions of the resolution. My second responsibility was to reach an understanding with the Legislature that would uphold the University's governance principles while avoiding financial or political fallout. We had a lively give-and-take, after which Regent Connerly gave tentative approval to Version #3. I asked him to not say publicly or privately that he supported Version #3 because doing so would undermine political and public support for it. Regent Connerly agreed, although he sounded chastened. It was painful to be so candid with him because I respected him even though we disagreed on this and other issues. He had been fair and forthright in working with Regent Hopkinson and me.

Regent Connerly was gracious in conceding. Whether the word was “supersede,” “rescind,” or “replace,” he would not let it interfere with the approval of the resolution. He knew students who were proud of being admitted to the University on their own accomplishments and wanted this clause to remain in the resolution. However, he deferred to my judgment about including or deleting it. He put the best interests of the University ahead of his own values and beliefs.

I called Assembly Speaker Hertzberg to inform him about Version #3 and explained that Regent Connerly did not like it. I was unsure if Regent Connerly would support it. We would have to wait until the Regents meeting to know for certain. Regent Johnson, the Chair, was upset that we had revised the resolution yet again. Regent John Davies did not welcome the Latino Legislative Caucus’ involvement. I responded that I did not consult the Latino Legislative Caucus in writing Version #3 and would not review the revised language with them. Regent Connerly, Regent Hopkinson, and I believed Version #3 was appropriate under rapidly changing circumstances. Our next step would be to take it to the Regents’ meeting for a vote. Regent Davies said if Regents Connerly and Hopkinson and I agreed on Version #3, he would support us.

I left for a dinner meeting at UC San Francisco Chancellor Mike Bishop’s residence. The President and the Chancellors had finished eating, so I updated them before calling Regents to inform them about the latest revisions. Meanwhile, Regent’s Chair Johnson was calling her fellow Regents to tell them Version #3 was the wrong approach. Since I had already spoken to the Regents she was calling, she learned that none of the Regents objected to Version #3. Rather, they wanted to get this issue behind them and to do it with a consensus among the Board, if possible. I rode back to the hotel with President Atkinson, and we agreed to meet at Regent Hopkinson’s hotel room at 9:30 p.m. Upon our arrival, Assembly Speaker Hertzberg called to say Version #3 did not meet the needs of the Legislature and he could not support it. I reminded him that Version #3 rescinded SP-1 and SP-2 outright. It repealed the Regents’ policy that 50 to 75 percent of first-year students be admitted solely on their high school GPAs and SAT I scores. It deleted the paragraph that had incensed Assemblyman Firebaugh. It stated in the title and at the beginning of the resolution that the Regents were rescinding SP-1 and SP-2. I asked what more could I do.

Assembly Speaker Hertzberg knew none of this because he was looking at an earlier version of the resolution. I said Lt. Governor Bustamante would appreciate this version because it said the faculty would recommend new admissions criteria that, upon approval by the Regents, would apply to students enrolling in the Fall of 2002. Since the students entering in the Fall of 2001 already had been admitted, there would be no additional students admitted using the policy Lt. Governor Bustamante disliked. I told Speaker Hertzberg I was trying to inform Lt. Governor Bustamante of the revisions but had not succeeded in reaching him. Speaker Hertzberg said he would send his Highway Patrol officer to ask the Lt. Governor to call me immediately. Within minutes Lt. Governor Bustamante called to say he could live with Version #3 if it did one thing: state that any new admissions policies would take effect with the entering class of 2002. I responded that the resolution could not commit the Regents before they reviewed the faculty’s recommendations. However, President Atkinson had already made the commitment, and he should be believed. Regent Hopkinson heard our conversation and joined in. She said the Regents would feel we were moving them too far away from their existing policy too quickly and would consider this to be tying their hands. Lt. Governor Bustamante replied that he would accept a letter reiterating the President’s commitment. I continued calling Regents until about 11:30 p.m., after which I wrote the letter from President Atkinson to Lt. Governor Bustamante.

When I arrived at UC San Francisco the next morning, Lt. Governor Bustamante, Speaker Hertzberg, and Assemblyman Firebaugh were meeting with Student Regent Fong. Regent Fong had persuaded them the Regents should eliminate the 50 to 75 percent admissions policy immediately and should relinquish their responsibility to make future decisions about admissions policy. I explained why Regent Fong’s demands were unreasonable, and they asked for time to think about our respective positions. Thousands of students and members of the public were outside the building, chanting and pounding on drums. The public speakers were complaining about Version #2 of the resolution because they did not know there was a Version #3.

President Atkinson was asked to join a meeting with the Lt. Governor, the Speaker, 10 members of the Latino Legislative Caucus and Student Regent Fong. He grabbed my arm and walked me into the meeting. The Legislators said they could not support Version #3. They wanted to eliminate the SAT I as a condition for admission and adopt a comprehensive review process for freshman admissions in place of the SP-1 provision requiring that 50 to 75 percent of first-year students be admitted solely on their high school GPAs and SAT I scores. I said their demands would accomplish what no one else had been able to do: it would unite the faculty, the Regents, and the administration. Unfortunately, it would unite them against the legislators for demanding that the Regents rescind the delegation of authority to the faculty to recommend admissions policies. The Regents had rescinded this delegation of authority when they adopted SP-1 in 1995, deeply upsetting the faculty. Now, six years later, the legislators were demanding that the Regents do it once again. If they proposed this, I said they would see a figurative explosion that would bring down the building. And they would alienate the faculty, the very group whose approval was needed for the admissions policies advocated by the legislators.

My second point was that their demands would result in the resolution being set aside. In its place there would be an up or down vote to reaffirm SP-1 and SP-2. I predicted that the Regents would reaffirm both policies by a one-vote margin, and each legislator would have to live the rest of their lives knowing they had instigated the Regents to reaffirm the dreaded policies we were very close to rescinding. This would send a chilling message to California high school students and their families. A vote to reaffirm SP-1 and SP-2 would take Regent Connerly out of the political shadows, thrust him once again into the national political spotlight, and give renewed momentum to his efforts to end affirmative action throughout the nation. If they were willing to assume public responsibility for this outcome, they should continue their demands. Speaker Hertzberg looked around the room, and said, "Bruce, I am with you."

The legislators wanted the Regents to give up their role in setting admissions policy. Since 1878 when the California Constitution gave the University constitutional autonomy, the Regents had been solely responsible for governing the University. They had delegated to the faculty the responsibility to recommend admissions policy changes while retaining the authority to approve their recommendations. I asked Speaker Hertzberg if he would give up the powers of his office if 10 members of the Assembly asked him to do so. And, if he did so, would he be upholding his responsibilities as Speaker, which he had sworn to uphold in assuming his office? Speaker Hertzberg turned his head toward Student Regent Fong and said, "Justin, you lost that one too."

The legislators also wanted the Regents to commit to the 2002 implementation date for the faculty's new admissions changes. President Atkinson had already written a letter to Lt. Governor Bustamante — which I showed them — saying that any new admissions criteria approved by the Regents in the Fall of 2001 at the urging of the President and the Academic Senate would take effect in 2002. Since no fall entering class would be admitted before 2002, no time was being lost. The exception was the very small number of students admitted in the spring and winter. Since the vast majority of first-year students enroll in the fall, the legislators should not be concerned that the 50 to 75 percent admissions requirement would remain in place in the interim.

The legislators wanted us to guarantee that the Regents would act immediately on any faculty recommendations for admissions policy changes. I said President Atkinson sets the agenda for the Regents meetings and decides when to put a topic on the agenda. They responded that they did not trust the Regents. I asked if they trusted President Atkinson, to which they unanimously replied, "Yes." I explained again that if they tried to force the Regents' hand, they would force a vote on SP-1 and SP-2. The Regents would reaffirm both policies by a narrow margin, and the legislators would have to publicly acknowledge that they had provoked this outcome. They backed off that demand as well.

Just then I was interrupted by a phone call from Lynn Shenk, Governor Davis' Chief of Staff. Governor Davis wanted to know how the Lt. Governor and the Speaker, as ex officio Regents, intended to vote on Version #3. I asked them what I should tell the Governor. Speaker Hertzberg looked at me and said, "Bruce, you have my vote." Lt. Governor Bustamante said, "Bruce, you have my vote, too." They turned to Student Regent Fong, who was seated between them. He remained silent, convinced that his demands were reasonable. The Lt. Governor and the Speaker each elbowed him in the side. Regent Fong said, "Okay, I'll vote for it."

We walked out of the room just as the legislators were being invited to speak at the public comment session. As a sign of respect, the legislators were invited to speak from the Regents' table instead of at a microphone in the aisle of the auditorium. Each of the legislators said in sequence, "I urge you to support the resolution to rescind SP-1 and SP-2."

The Secretary began the roll call of the Regents present at the meeting. Regent Johnson, the Chair, announced that a two-thirds vote was necessary to bring the resolution to the full Board for its consideration instead of having it discussed first by a Regents' committee. The vote was taken, and the two-thirds requirement was met. She turned the meeting over to Regent Hopkinson, who said there were three University Officers at the Regents' table to answer questions: General Counsel Holst, to address any legal issues; Provost King, for questions about admissions; and Senior Vice President Darling, to summarize the resolution and answer questions about it. Regent Hopkinson said she would move adoption of the resolution after I summarized it. I noted that the resolution would do two things: it would rescind SP-1 and SP-2, and it would eliminate the requirement that 50 to 75 percent of first-year students be admitted solely on the basis of high school GPAs and SAT I scores. I reviewed each of the six points the Regents would commit to in adopting the resolution. When I finished, Regent Hopkinson moved the adoption of the resolution. Regent Connerly was invited to speak next. As he was explaining his support for the resolution, another Regent interrupted to preemptively second Regent Hopkinson's motion before Regent Connerly could do so. However, the Chair recognized Regent Connerly as seconding Regent Hopkinson's motion.

When Regent Connerly seconded the motion, people in the room and outside the building erupted in cheers. Each of the Regents spoke in turn. They were all very positive. After 30 minutes of Regents' comments, Chair Johnson called for the vote. The Secretary went down the list of Regents alphabetically. "Aye. I'm voting for the students of the University of California," said one. Regent

Odessa Johnson said, "I want everybody to know that I wore a black suit today because I'm here for the funeral of SP-1 and SP-2, and I'm voting for the future students of the University of California." "Which way are you voting — aye or nay?" said the Chair. I said, "Aye, Regent Johnson, aye." She smiled and said "aye" in a loud and commanding voice.

The Regents continued to vote "aye, aye, aye." The Secretary said, "Madam Chairman, the vote is unanimous." The room immediately turned into a religious revival meeting. The Regents and the audience jumped to their feet, raising their arms in the air. People were crying, hugging one another, and shaking hands. President Atkinson was sitting in his chair with his arms stretched wide, head tilted back, and mouth open, as if he were thanking The Almighty. A video of him in this pose was broadcast on the nightly TV news. I sat at the table stunned. I had not imagined that the vote would be unanimous. Regent Sherry Lansing, the Chairman of Paramount Studios, came over and gave me a big hug. Everyone was saying, "It's incredible. It seemed impossible." The Speaker gave me a hug, as did Superintendent of Public Instruction Delaine Eastin.

Then we attended a press conference with 15 print reporters and a half-dozen TV reporters with cameras rolling. Lt. Governor Bustamante said, "The President has promised the SAT will be eliminated, as will the 50 to 75 percent admissions requirement. If it doesn't happen, we will sue him." President Atkinson corrected the Lt. Governor's statement. No such promise had been made. The reporters wanted to hear from Michael Cowan, the Chair of the Academic Senate. They said, "The President says he expects the faculty to recommend the elimination of the SAT. What do you say as Chair of the Academic Senate?" President Atkinson stepped in and said, "I think that's an unfair question to ask the Chair." After the press conference, Assemblyman Firebaugh said to me, "This is a great accomplishment. I really want to thank you. We are going to have an event in Sacramento so the Legislature can honor you and Dick for this outcome."

That night at the Regents' dinner, Regents' Chair Johnson asked me to come to the podium to make some comments. She said the resolution was a statesman-like act and she wanted to recognize me for it. I said, "You may have seen your faces on the evening television news. You also may have heard that the Dow Jones Industrial Average had its single largest point gain in history. Some people attribute it to the Federal Reserve's decision to lower interest rates. I think it was because you unanimously rescinded SP-1 and SP-2." Laughter erupted throughout the room. "When we began this journey, we did not know what was possible. It was difficult, occasionally perilous, and quite an adventure." I complimented Regents Hopkinson and Connerly who, with opposing convictions, came together to put the best interests of the University first. And I thanked the President and the Chair, who, as befits their positions, were very demanding, but also exceptionally understanding and supportive. I proposed a toast to the Regents. They took an issue that was divisive and contentious, came together despite differing beliefs, and did what was best for the University and the people of California.

The next day, by way of an epilogue, we heard that Assemblyman Tony Cardenas, Chair of the Assembly Budget Subcommittee on Higher Education, was angry. The rumor was that the resolution had not gone far enough. This was a shock. The day before, when I told Lynn Schenk, Governor Davis' Chief of Staff, that the Lt. Governor, the Speaker, and the Student Regent were all supporting the resolution she said, "This is a miracle. What did you do?" She knew everybody's position that morning coming into the meeting. She said, "The Governor is standing right here listening to us. We can't believe you pulled this off! It's incredible." We were stunned to hear that Assemblyman Cardenas was so unhappy that he planned to eliminate funding for University salary increases, remove all of the University's one-time money from the budget, and delete the entire capital outlay budget. That evening I spent 45 minutes on the phone with Mr. Cardenas' chief education advisor, Max Espinoza, a former Student Regent, explaining the resolution and what had been accomplished. Mr. Espinoza understood the import of the Regents' decision and was trying to protect the University's budget, but Assemblyman Cardenas was intent on zeroing out the California Institute for Sciences and Innovation at Berkeley. I called Speaker Hertzberg, who answered saying, "I can't believe what you accomplished. You guys are miracle workers." I did not realize until later that the Speaker interrupted his wedding anniversary celebration to take my call and offer his reassurance. He said, "I'll call Tony right now," and added, "I flew down on the plane to Los Angeles last night with most of the legislators at the Regents' meeting. They were all thrilled."

Speaker Hertzberg called President Atkinson the next day to say, "I told Tony that he could not cut the Science Institute at Berkeley, he could not cut funding for University salaries, he could not cut the one-time money, but if he wanted to, he could take to the Assembly-Senate Budget Conference Committee several capital outlay projects and maybe a single one-time budget item. The University will have to defend each budget item one last time." The Speaker firmly supported the UC budget because we had reached an agreement with him the day before on the resolution. The Budget Conference Committee conducted an additional review of the planning money for UC San Diego's Pharmacy School Building, UC Irvine's Natural Sciences Building, and one-time money to extend the infrastructure for a higher-speed internet service for California's institutions of higher education, known as Internet 2. That was a big improvement over the threat to hold most of the budget hostage

I called UC Santa Barbara Chancellor Henry Yang who knew Assemblyman Cardenas as a UCSB electrical engineering alumnus. Chancellor Yang called Mr. Cardenas and said, “Bob Villa, the admissions director who admitted you, is absolutely ecstatic with the Regents’ decision. Your former professors are ecstatic. Let me explain why it was such a positive outcome.” Chancellor Yang did a masterful job of explaining the situation to Mr. Cardenas. Mr. Cardenas replied, “I have always considered President Atkinson to be a man of great honor. I now understand what he has accomplished. I have nothing but compliments for the University, and I withdraw my objections to the University’s budget items.” Chancellor Yang called that night to relay Mr. Cardenas’ commitment. I was effusive in my praise and appreciation for Chancellor Yang’s persuasiveness.

The next morning, Saturday, Vice President Hershman called to say the Budget Conference Committee had met the night before. Assemblyman Dennis Cardoza, a member of the Assembly Budget Subcommittee, was in the hospital and unable to attend. Assemblyman Cardenas attended in his place, voted in favor of all of our budget items, and offered many complimentary remarks about the University. However, Mr. Cardenas had not returned President Atkinson’s phone call, and we wondered if there was a lingering problem. Finally, on Sunday, Mr. Cardenas called President Atkinson to compliment the University. He did raise one item of concern. Unbeknownst to us, earlier in the year he had asked for 50 years of University admissions data. He wanted data from the period prior to the adoption of affirmative action in 1972, data from the period in which the University was using affirmative action in admissions decisions, and data for the period following the adoption of SP-1, when affirmative action was prohibited. The data would allow him to analyze the impact of affirmative action on UC admissions. Vice President Alex Saragoza had promised to give him the data by the end of March. It was now May 20, and Mr. Cardenas had not received them. He said it was disrespectful for the University to promise to provide the data and not deliver them. President Atkinson said, “I understand why you’re upset. I don’t think we have 50 years of data. We have 30 years of data, and we’ll give you whatever we have. And we’ll do it on the following time schedule.” Mr. Cardenas ended the call by thanking him for his responsiveness.

In retrospect, the effort to develop the resolution to rescind SP-1 and SP-2 was both challenging and rewarding. The challenge was taking on a difficult task that presented the University with unwelcome choices and would likely become a public embarrassment. The reward was devising an outcome that, despite its twists and turns, many uncertainties, and several instances in which it fell apart, helped the Regents and the University arrive at the right position on a salient and highly-charged educational policy, public policy, and political issue.

I was still concerned. Although every Regent had voted to rescind SP-1 and SP-2, I was worried that a bad taste might have been left in the mouths of some Regents who may have concluded incorrectly that we acquiesced to the legislators’ demands. To address this concern, I called Regents’ Chair Johnson, as well as Regents Connerly, Moores, Preuss, and Davies. The rapid manner in which events unfolded the morning of the Regents’ meeting had precluded me from telling them about the meeting with the Lt. Governor, the Speaker of the Assembly, the 10 members of the Latino Legislative Caucus, and Student Regent Fong. I explained the demands and how we responded. I wanted them to know that we did not sacrifice the Regents’ constitutional autonomy and that we upheld the fundamental principles of University governance in the face of considerable pressure. The Regents appreciated this information. This was particularly true for Regent Preuss, who — when his turn came to vote — was the only Regent who hesitated before voting in favor of the resolution. At the time, I thought he might cast the lone negative vote. Regent Preuss said he felt much better because he had been upset that the University was being bullied by the legislators. When I explained their demands and our response, he was grateful that we stood up for the governance responsibilities and independence of the Regents. Regents Johnson, Connerly, Moores, and Davies were equally appreciative. After a united vote on the resolution, I did not want the Board to be resentful on the unfounded belief that President Atkinson and I had acquiesced to the bold demands of the legislators. Now that the Regents knew what had taken place, we had a united Board that appreciated what they accomplished by rescinding SP-1 and SP-2.

What did we accomplish in rescinding SP-1 and SP-2, since the use of affirmative action in admissions was prohibited by Proposition 209? First, we removed the stain of SP-1 and SP-2, which had remained a contentious political and public issue within the University, with the Legislature, and with the public. This was evident at every Regents’ meeting from 1995 to 2001. SP-1 and SP-2 were vociferously denounced during the public comment session at each Regents’ meeting for six years. Second, we returned the responsibility for setting the standards for admission to the faculty. Third, we repealed the Regents’ requirement that 50 to 75 percent of each first-year class be admitted solely on high school GPAs and SAT I scores. This enabled the faculty and the administration to expand the array of admissions criteria that would further diversify the student population while ensuring student academic success. The admissions criteria would more closely resemble those used by nearly every selective college and university in the United States. Fourth, we sent a resounding message to high school students and parents throughout California that students from every region and every racial, ethnic, and cultural background were welcome at the University if they studied hard and completed the high school courses required for admission with high grades. Fifth, we unified the Regents on one of the most contentious educational, public policy, and political issues in the University’s recent history. Finally, we changed for the better

the unwelcome and unhealthy dynamic between the University, the Legislature, and the public that had prevailed since the adoption of SP-1 and SP-2 in 1995.

Since the rescission of SP-1, the University has strived to enroll a more diverse population of students to better represent California's increasingly diverse population while maintaining selective admissions standards, ensuring high academic performance by its students and ever-improving graduation rates. These were the goals we sought to accomplish in rescinding SP-1 and SP-2. There continues to be a great deal of work ahead for the faculty, the administration and the Regents to continue to improve on these educational and societal goals.