

The Regents of the University of California

**COMMITTEE ON EDUCATIONAL POLICY
COMMITTEE ON FINANCE**

May 15, 2003

The Committees on Educational Policy and Finance met jointly on the above date at UCSF–Laurel Heights, San Francisco.

Members present: Representing the Committee on Educational Policy: Regents Atkinson, Bustamante, Connerly, Johnson, Kozberg, Lansing, Lozano, Marcus, Moores, O’Connell, Sainick, Sayles, Terrazas, and Wesson; Advisory members Murray, Siegler, and Binion
Representing the Committee on Finance: Regents Atkinson, Connerly, Hopkinson, Ligo-Gordon, Lozano, Montoya, Moores, Parsky, Preuss, and Sayles; Advisory members Murray and Pitts

In attendance: Regents Blum and Davies, Secretary Trivette, General Counsel Holst, Treasurer Russ, Provost King, Senior Vice Presidents Darling and Mullinix, Vice Presidents Broome, Doby, Drake, Gomes, and Hershman, Chancellors Bishop, Carnesale, Cicerone, Córdoba, Dynes, Greenwood, Tomlinson-Keasey, Vanderhoef, and Yang, and Recording Secretary Bryan

The meeting convened at 11:30 a.m. with Committee on Educational Policy Chair Kozberg presiding.

1. APPROVAL OF MINUTES OF PREVIOUS MEETING

Upon motion duly made and seconded, the minutes of the meeting of January 15, 2003 were approved.

**2. PROPOSAL TO OPPOSE CALIFORNIA STATE BALLOT INITIATIVE:
CRECNO (CLASSIFICATION BY RACE, ETHNICITY, COLOR, OR
NATIONAL ORIGIN)**

The President recommended that The Regents oppose the Classification By Race, Ethnicity, Color, or National Origin (CRECNO) initiative, to be included on the March 2004 statewide primary election ballot.

Senior Vice President Darling informed the Committees that the Classification by Race, Ethnicity, Color, or National Original initiative would prohibit the State and other public entities, including the University of California, from classifying certain individuals by race, ethnicity, color, or national origin. The initiative would permit action only for the following exemptions: to comply with federal law or to establish or maintain eligibility for any federal program where ineligibility would result in a loss

of federal funds to the State, and for “medical research subjects and patients.” The initiative, a proposed amendment to the California Constitution, has qualified for the March 2004 primary election ballot.

The University of California collects socioeconomic data, including racial and ethnic data, in order to fulfill its mission. Faculty research relies on these data. They are also used in admissions and enrollment, educational outreach, student financial aid, faculty and staff employment, and contracting practices, to ensure that the University complies with appropriate federal and State regulations and to enable UC to assess the ability of these programs to reach all segments of society. Uses of these data include evaluation of the University’s application, admission, and enrollment practices; assessment of the effectiveness of outreach programs; assessment of the availability of financial aid in certain instances; and a variety of other purposes, including academic research conducted by UC faculty and researchers. In addition, UC faculty and researchers rely on data collected by the State that classify individuals by race, ethnicity, color, or national origin.

In order to assess the initiative’s impact on the University’s operations, the President requested the Office of the General Counsel (OGC) to analyze the applicability of the initiative to the University as well as its implication, if approved by the voters, for various aspects of University operations. Senior Vice President Darling explained that, to assist the OGC in its analysis, relevant offices were asked to respond to the following questions:

- What racial and ethnic data does UC collect?
- Why does UC collect such data?
- At whose behest does UC collect such data? Are the data collected for the University’s own purposes or to fulfill a reporting requirement to a State or federal agency? If the latter, what is the agency’s mandate to collect it? Is it a statutory mandate? Is it a regulatory mandate? Or is it an administrative request from the agency?
- If the data are collected by faculty, researchers, and graduate students for their research purposes, could they still do so under CRECNO? In other words, would the initiative affect faculty research differently than it would affect other aspects of the University?
- If State agencies could no longer collect such data, how would this restriction affect faculty research? Would it affect the University’s ability to recruit and retain faculty, researchers, and graduate students? In order to address this issue, the Governor’s Office assisted the University by surveying State agencies and departments whose databases include racial and ethnic classifications and are regularly used by UC faculty in academic and policy-related research. The Governor’s Office asked agencies whether the

data are collected pursuant to federal law, or as a requirement for the receipt of federal funding.

- After taking into account the exemptions in the initiative that permit the collection of such data, what would be the impact on the University's mission if it were not able to collect and use such data?

Summary of Impact on University Research and Operations

General Counsel Holst has provided an opinion of the Office of the General Counsel as to the potential legal effect of the initiative that incorporates descriptions of its likely operational impact in various areas of University activity based on information provided by the affected academic and administrative units. It was determined, based on this analysis, that while racial and ethnic data collection required for funding by the federal government could continue, the initiative may restrict the University's ability to collect and use these data for a number of internal and other purposes critical to its mission. In the absence of ballot language and without knowing how the courts would interpret the voters' intent, it is uncertain whether, for example, data that are "properly" collected pursuant to CRECNO could thereafter be used by the University for a variety of purposes. According to the Office of the General Counsel, further use, including analysis and other manipulation of data, would arguably be prohibited and the only use the University could make of the data would be that which is federally mandated.

The initiative's potential impact on academic research includes the possible loss of numerous State databases containing information classified by race and ethnicity. This loss could impede the University's ability to conduct research to advance knowledge and inform public policies relevant to the State and the nation. It is also likely that the UC campuses would experience a negative impact on their ability to attract the best faculty and graduate students in certain disciplines due to the perception that the State of California is hostile to research employing racial classifications. This could hinder UC's efforts to hire faculty of the highest caliber to maintain quality while accommodating an anticipated surge in enrollment in the coming decade. Finally, to the extent faculty research was found to be "any other State operation," rather than the "operation of public education," the initiative could significantly limit the faculty's ability to collect data needed for research.

The initiative could also have an impact on other areas of University operations. In admissions and enrollment, for example, the initiative would prohibit collection of race and ethnic data from UC applicants and admits, while collection of enrollee data would likely be allowed to continue under federal law. The consequence would be to restrict internal and external accountability of the University's application, admission, and enrollment practices, as well as limit the scope of its evaluation of outreach and recruitment efforts and their impact on academic preparation and college-going patterns of students from different backgrounds. The initiative could impede the University's ability both to demonstrate its commitment to maintain a student body

that encompasses the broad diversity of backgrounds characteristic of California, as specified in Regents' policies SP-1 and RE-28, and to ensure that race, religion, sex, color, ethnicity, or national origin are not considered as criteria in the admissions process, pursuant to Proposition 209.

In UC's educational outreach enterprise, racial and ethnic data on program participants are used in evaluating and improving the effectiveness of the University's outreach programs and in ensuring that all demographic groups have access to these programs. Collection of these data by the University would be curtailed, as most of it is not federally mandated. Lack of ability to report program results for different groups of students could reduce private funding available for these programs.

In financial aid, although the University does not engage in any preferential awards on the basis of race or ethnicity, race-neutral means allow UC to continue to award targeted funds to aid-eligible students of specific ethnic or national backgrounds, thus increasing total funding available for all students. At the graduate level, lack of data on race and ethnicity would reduce the University's ability to use such funds for recruitment of admitted students. Lack of data on national origin would require UC to give up private funds targeted on this basis, thus reducing total aid available for all students.

In employment, contracting, and institutional planning and research, much of the racial and ethnic data that UC collects are federally mandated; therefore, the initiative would likely not have a significant impact. However, in certain instances where the University is prohibited from gathering data that are not federally mandated, operations in these areas could be negatively affected. For example, the University's ability to carry out activities that ensure non-discrimination in employment and contracting would be limited without racial and ethnic data. Such activities include conducting surveys of faculty intending to leave University employment that provide the administrative and academic departments with valuable recruitment and retention information, and assessing faculty awareness of certain family leave policies. In addition, the University may be prohibited from reporting such data to interested parties, such as **U.S. News and World Report** for its institutional ranking purposes.

Conclusion

While the CRECNO initiative provides for some exemptions, on balance the initiative contains, depending on its ultimate interpretation by the courts, potentially significant restrictions that would impede the University's ability to conduct basic and policy-related research, to carry out its admissions and outreach programs, and otherwise to carry out the University's mission without restricting the freedom of scientific and scholarly inquiry. The uncertainty about the initiative's impact on certain of the University's operations and its apparently clear impact on others is of great concern.

Based on these analyses, the President concludes that the potential impact as well as the lack of certainty about other possible impacts of the Classification By Race, Ethnicity, Color, or National Origin initiative could adversely affect the University's ability to carry out its core mission, including in the area of academic research. The Academic Senate has come to the same conclusion. The Senate believes that in order for the University to retain its stature among research universities, it must be a hospitable venue for research on all matters of scholarly interest.

Regent Connerly commented that the topic of race has caused some of American society's most bitter disputes. In recognition of this fact, the courts have ruled consistently that race is an inherently suspect classification and should be invoked by the government only for a compelling reason. He underscored CRECNO's exemption for medical research patients and subjects, stating that the intent is to exclude all things medical from the initiative, including healthcare delivery and epidemiological research. Also, the initiative contains a provision that allows the Legislature to override certain activities where compelling need is found.

Regent Connerly observed that it is the nature of public law to set the tone on the issue of race. When the government classifies and categorizes people, it sends the message that society believes it to be just and wise to divide people by physical traits. The government gives credence to the view that races are fixed and should be important determinants in our society. Regent Connerly asserted that a growing number of individuals do not want their race imputed on the basis of their physical features. He noted that the proponents of the initiative are in full accord that individual faculty members are not to be interpreted as the State and should be excluded unequivocally from the provisions of the initiative. He acknowledged the concern of the faculty and invited the University to collaborate with the initiative's proponents to draft language for the voters that would make clear that academic freedom will not be threatened.

Regent Connerly believed that, in time, racial categories will crumble as the result of the natural forces of human interaction in a free society. He was troubled that the University considers itself so invested in the maintenance of race consciousness that it must oppose, apparently forever, any effort to end racial categorization.

President Atkinson invited Stuart Hurlbert, a Professor of Biology at San Diego State University, to address the Regents. Professor Hurlbert, a proponent of CRECNO, commented that all the justifications for gathering race data given in the President's recommendation to oppose the initiative apply in equal force to the gathering of data on political party, religion, and sexual orientation. He believed that the recommendation was a one-sided summary and an inadequate basis for making a decision in that only potentially negative consequences of the initiative were considered and the process that generated the proposal was biased. He surmised that close to 50 percent of UC faculty actually favored the racial privacy initiative.

Regent Marcus recalled that the University had been established as a Constitutional body primarily to avoid the onslaught of political influence. He observed that any vote

by the Regents would not decide the issue and that going through the exercise would depreciate the value of the University by making the Regents appear irresponsible for allowing themselves to become distracted from dealing with the important business of higher education. He offered a substitute resolution “that The Regents does not take any political stand on any initiative that is before the people of California.”

General Counsel Holst explained that the substitute motion went beyond the range of subject matter that had been noticed on the agenda and that therefore, under the Open Meeting Law, it could not be considered.

Regent Marcus amended his motion to read “that consideration of the President’s recommendation be postponed indefinitely.”

At the request of Committee on Educational Policy Chair Kozberg, General Counsel Holst explained further that it would take affirmative votes of the majority of the members of each committee present in order to approve the recommendation to postpone consideration of the item indefinitely and present it to the Board. If only one committee were to vote to postpone consideration, the other committee would continue its consideration of the amended motion.

Regent Marcus’ amended motion, which he had made as a member of the Committee on Educational Policy, was duly seconded, following which the amended motion was duly made and seconded by members of the Committee on Finance.

Regent Ligot-Gordon believed that it was the primary responsibility of the Regents to uphold the University’s mission. He urged the Regents to make a decision without delay so as to signal to the State of California that CRECNO would affect the University’s ability to serve it.

Regent Sayles asked rhetorically whether the University still believed in diversity. He observed that the University’s efforts to maintain diverse campuses would be hampered if there were no way to determine the ethnicity of its students.

Regent Lozano stated that what makes the University world class is its research. That research relies on the ability to collect data, and the analysis of that data enables the University to focus resources and effort. Without it, there is no way to evaluate and monitor the effectiveness of its admissions and financial aid policies. She emphasized that the President’s recommendation to oppose CRECNO had been based on well-developed analyses by the President’s Office, the General Counsel’s Office, and the Academic Senate. She believed that in taking this into account and supporting his recommendation, the Regents would fulfill their obligation to represent the best interests of the University.

Regent Terrazas believed that the Regents should make it clear to the public that the Board itself has no affiliation with CRECNO and that Regent Connerly is acting as an individual in his role as spokesperson for the initiative. Although he agreed with

Regent Marcus that the Board should not be drawn into the political arena, he urged the Regents not to postpone voting on the issue.

Regent Parsky stated that, while he respected the right of Regent Connerly to express his views and the honesty with which he has done so, generally he was opposed to letting the Board vote on political issues. As a general principle, he believed that it was unfortunate that the Regents were allowing the University to become politicized, but he stated that in this case he was troubled by the fact that both the administration and the faculty were solid in their conclusion that CRECNO would have direct, serious consequences for the University and that it should be opposed by the University. He asked Senior Vice President Darling to reaffirm that upon deliberate, comprehensive consideration of the initiative as written and proposed, the University administration was recommending to the Regents that it be opposed, which he did. Regent Parsky then stated that he believed strongly in the importance of diversity on the University's campuses and in the importance of listening to the recommendations of its faculty and administration. In light of this, he urged that the motion to postpone consideration of the item be opposed and that the President's recommendation be supported.

General Counsel Holst pointed out that his Office's analysis of the legal issues involved was simply that and should not be seen as a recommendation.

Faculty Representative Binion commented on the question of whether the Regents should become involved in the issue. She reported that hundreds, if not thousands, of the faculty spent a year considering and discussing CRECNO and that they examined it only from the point of view of how it would affect the University. She noted that the many views on social issues that were expressed did not intersect with consideration of its impact on the University's research. The faculty believed that it had a compelling interest in getting involved. She strongly urged the Board to take action.

Regent O'Connell commented that, as Superintendent of Public Instruction, he had been asked frequently for the University of California's position on CRECNO. He believed there was no reason to postpone debate on the issue, nor was there a reason that the Regents should vote to never take a position on political issues. It was his opinion that CRECNO, if passed by the voters, would not withstand legal challenges.

Regent Preuss believed that taking a position on CRECNO would establish an unwelcome precedent. He did not think it was in the realm of Regental responsibilities to be the guardians of research data for every field in which University researchers participate. He was concerned that support for the President's recommendation was indicative of the existence of a hidden agenda, perhaps concerning admissions.

Regent Davies observed that in this case what was in the best interests of the University was a matter of judgment. He made a distinction between the impact of the initiative itself on the University and the political impact of the Regents' taking a position, which he questioned the wisdom of doing, particularly as it would have no

bearing on whether the initiative passes. He agreed with Regent Marcus that the issue should never have come up, but he believed that as it had, a decision should not be postponed. Like Regent Preuss, he was concerned that this issue could not be distinguished from hundreds of others that were controversial, such as Proposition 209, and that by taking a position on it, the Regents would be open to being drawn further into the political arena in the future.

Regent Lansing stated that she believed in a diverse student body and in the mission of the University, one of the key components of which was research. Because the Academic Senate and the administration had concluded that the initiative would affect the University's core mission, she felt comfortable in opposing it. Although she, too, was uncomfortable that the issue had been brought to the Regents, she saw it as an opportunity to inform the voters that passage of CRECNO would have consequences for the University.

Regent Sainick was also reluctant for the Regents to address a political issue. He supported Regent Marcus' amended motion to postpone consideration, but he indicated that if it should fail, he would support the President's recommendation, based on the position of the administration and the faculty.

A roll call vote was then taken on the substitute motion to postpone indefinitely the subject matter of the President's recommendation. Representing the Committee on Educational Policy, Regents Atkinson, Bustamante, Johnson, Kozberg, Lansing, Lozano, O'Connell, Sayles, Terrazas, and Wesson voted "no" (10), and Regents Connerly, Marcus, Moores, and Sainick voted "aye" (4). The motion to postpone failed before the Committee on Educational Policy. Representing the Committee on Finance, Regents Atkinson, Hopkinson, Ligot-Gordon, Lozano, Montoya, Parsky, Sayles, and Wesson voted "no" (8), and Regents Connerly, Moores, and Preuss voted "aye" (3). The motion failed before the Committee on Finance.

Committee Chair Kozberg reopened discussion on the original motion, the President's recommendation to oppose CRECNO.

Regent Hopkinson stated that she supported the President's recommendation. She believed that it was her responsibility as a Regent to take a position on CRECNO based on its potential impact on the University.

Regent Ligot-Gordon asserted that it was neither the consensus of the students nor of the Board of Regents that California should be a color-blind society. He believed that it should be "color-conscious" in a way that strives for equality.

Regent Bustamante stated that CRECNO would hurt California on a fiscal level during its worst budget deficit. It would hurt the public education system by taking away the ability to tailor an approach to, for instance, teaching English to students of different cultures. It would not allow racial information to be gathered from surveys, questionnaires, interviews, or epidemiological research, all of which are principal

sources of demographic information on which public health initiatives targeting illnesses such as sickle-cell anemia, tuberculosis, and certain types of cancer are structured. For this reason and others, every medical, public health, and patient organization that has studied the issue has voiced opposition to the initiative, nor does any civil rights organization support it. He believed that the Regents should state their opposition to the initiative loudly and clearly.

Regent Wesson stated that, should CRECNO become the law of the land, that alone would not make it right. He praised the goals of treating Americans as they are, judging people solely based on their actions, and creating diversity on campuses, but he observed that California has a long way to go before it can realize these goals fully. He stated that he intended to speak out against the initiative at every opportunity.

Then, upon motion duly made and seconded, the Committees voted on the President's recommendation that The Regents oppose the State ballot initiative CRECNO: Classification by Race, Ethnicity, Color, or National Origin. Representing the Committee on Educational Policy, Regents Atkinson, Bustamante, Johnson, Kozberg, Lansing, Lozano, Marcus, O'Connell, Sainick, Sayles, Terrazas, and Wesson voted "aye" (12), Regent Connerly voted "no" (1), and Regent Moores abstained. The motion carried before the Committee on Educational Policy. Representing the Committee on Finance, Regents Atkinson, Hopkinson, Ligot-Gordon, Lozano, Montoya, Parsky, Sayles, and Wesson voted "aye" (8), Regents Connerly and Preuss voted "no" (2), and Regent Moores abstained. The motion carried before the Committee on Finance.

[For speakers' comments, refer to the minutes of the May 14 and May 15, 2003 meetings of the Committee of the Whole.]

The meeting adjourned at 12:55 p.m.

Attest:

Secretary