

University of California Regents' Meeting
CRECNO Presentation
May 15, 2003
Bruce B. Darling
Senior Vice President, University Affairs
and
Interim Vice President, Laboratory Management

Madam Chair, I am here to present the President's recommendation that the Regents oppose the Classification by Race, Ethnicity, Color or National Origin initiative, which will appear on the March 2004 statewide primary election ballot.

You have had the opportunity to review the Regents Item, the Initiative language, a memorandum from General Counsel Holst, and a letter from Academic Council Chair Binion.

Before I briefly summarize the material, let me say that, in the last 25 years, only nine ballot measures other than education facilities bond acts have been brought before the Board.

We make this recommendation today because, after a thorough and impartial analysis, we have determined that the initiative may restrict 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 scholarly inquiry.

According to the initiative text, the 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. It includes three exemptions to this prohibition:

The first exemption would enable the University to collect such data to comply with federal law, or to establish or maintain eligibility for any federal program, where eligibility would result in a loss of federal funds to the state. It does not provide a similar exemption to preclude the loss of funds from private sector companies, foundations and individuals;

The second exemption is for “medical research subjects and patients.” The initiative is, however, silent on other forms of research, including public health research; and

The third exemption is for a “compelling state interest” that is approved by a two-thirds majority of both houses of the Legislature and by the Governor. However, this exemption does not apply to public education, contracting or employment.

In order to assess the initiative’s impact on the University’s operations, the President requested a legal analysis from the Office of the General Counsel. To assist the General Counsel, I convened a group from the President’s Office which has, for the past eleven months, examined what racial and ethnic data the University currently collects, why and at whose behest it collects such data, the University’s uses of the data, whether the data could still be collected if voters approve the initiative, and how the University’s mission would be impacted if it were not able to collect and use such data.

The University of California currently collects socioeconomic data, including racial and ethnic data, for a number of specific purposes. These data are collected to meet federal and state requirements as well as to evaluate the University’s application, admission and enrollment practices; to assess the effectiveness of outreach programs; to assess the availability of financial aid in certain instances; to evaluate faculty and staff employment and contracting policies; to ensure compliance with federal and state regulations; and to enable the University to assess the ability of all these efforts to reach all segments of society.

But perhaps most critically, it is used for academic research conducted by University faculty and researchers. Because researchers also rely on data in state databases, we sought assistance from the Governor’s Office to survey State agencies and departments whose databases include racial and ethnic data to determine whether the data are collected pursuant to federal law or as a requirement for the receipt of federal funding.

Based on General Counsel Holst’s analysis, it seems clear that the collection of racial and ethnic data in order to receive federal funding could continue. But in the absence of ballot language, and without knowing how the courts would interpret the voters’ intent, it is uncertain whether the University could use those data for any other purpose, including for faculty research

purposes. For instance, could the data collected to meet federal requirements be used for other research purposes?

There are other troubling impacts on research. They include the possible loss of numerous state databases, which would impede the University's ability to conduct research to inform public policies relevant to the State and the nation. This could, in turn, heighten our challenge in recruiting faculty and graduate students in certain disciplines due to the perception that California does not welcome research that uses data on the race, ethnicity and national origin of California's citizens; and, depending on whether faculty research is determined to fall within the initiative's definition of "any other state operation" rather than the "operation of public education," it could significantly limit the faculty's ability to collect data needed for important research.

The initiative could also have a significant impact on other areas of University operations. While these are reviewed in the Regent's Item, let me comment on one point related to admissions and enrollment: Without racial and ethnic data, the University will be impeded in its ability to monitor and evaluate the treatment of students of all ethnicities throughout the admission process, and to demonstrate the possible impacts of any changes in admissions policies. This could undermine both the commitment made by the Regents in enacting policies SP-1 and RE-28, as well as full compliance with Proposition 209.

Based on these analyses, we have concluded 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 outreach and academic research. After considerable independent analysis and discussion, the Academic Senate has come to the same conclusion.

Madam Chair, that concludes my introductory remarks. General Counsel Holst has some additional comments about the initiative and then we would be pleased to answer your questions.