

**Testimony of Gayle Binion  
Chair, Academic Senate of the University of California**

**Joint Assembly-Senate Judiciary Committee  
Hearing on Proposition 54  
August 27, 2003**

I would like to thank both the members of the judiciary committees of the Assembly and the Senate, as well as the UC Office of the President, for the opportunity to present the views of the UC Academic Senate on CRECNO, now known as Proposition 54. This proposed constitutional amendment, which would prohibit most California governmental entities from collecting or maintaining data bases including race, ethnicity, color or national origin, was the subject of a nearly one-year review by the faculty of the University of California. It was discussed by eleven different systemwide committees as well as on each of our nine campuses. The unanimous conclusion among all of these bodies was that this Amendment would undermine public policy and pose special dangers to the University itself.

We have distributed the letter I wrote to President Atkinson last April, which formed part of the basis for the decision of the UC Board of Regents in May to oppose CRECNO. This was by the sizeable margin of 15 to 3, with one abstention, and was non-partisan. Because you all have this lengthy letter, I will not recount all of the concerns raised therein, but let me just highlight the most critical points.

The faculty Senate cannot recall the last time we took a collective position on a political issue.... And each of us has his or her own views of CRECNO beyond the matters that would directly affect UC. We focused on only the potential consequences for our collective missions as educators, researchers and public servants to the State. These consequences are non-trivial and thus warranted our taking this very unusual step into the political fray.

1. First, as scholars with a commitment to the importance of gathering and analyzing empirical information, the Academic Senate is concerned with the State not having potentially valuable knowledge to inform its public policy. While racial and ethnic data are subject to misuse they also have very valuable uses in tracking the effective development and implementation of policies governing public health, education and employment. Thus, the faculty believe that the quality of public policy is seriously endangered by Proposition 54.
2. Second, the faculty are very seriously concerned about the potential impact of Proposition 54 on the University as an institution serving the people of California.
  - A. Will we be able to assess how well we are reaching all communities within the State in the processes by which we select our student body? (While federal law requires collecting racial and ethnic data on enrolled students, it does not mandate these data for potential students, or applicants, or those accepted who do not enroll.) Thus, such analyses would likely be prohibited. We would not know whether our systems and policies are inadvertently and unnecessarily depressing access to a UC education for particular ethnic groups.

- B. Under the California Master Plan for Education, the University of California is the preeminent public research institution in the State, if not the nation. How will our research programs be affected by Proposition 54? The potential implications for our research programs are staggering... It is clear that U.C. as an institution is covered by the Proposition; to what extent are the faculty covered under the principles of “state action.” Would we be constrained in researching subjects that entail collecting and analyzing racial data? Would our state-funded survey research centers be able to ask or record a person’s race or ethnicity (even anonymously or confidentially) in order to understand the political views, or policy preferences of different groups in society? Will public health researchers lose the State data bases on which they rely for the demographic information that helps them to understand disease or access to health services in different communities? Will the Regents, acting as the formal representatives of the University, be barred from accepting grant funds on behalf of a faculty Principal Investigator if the research entails collection and/or analysis of data that include race or ethnicity...? These are just some of the open questions that would likely be resolved via judicial interpretation if this initiative becomes law. Answers that within a constitutional law context would not be unreasonable, would be very unreasonable in their consequences for the educational and research missions of the University of California.

Two final caveats I would like to note. First, the exemptions for *federally required* data collection and *medical research subjects and patients* are minimal protections for the research enterprise. Data bases collected only because they are federally mandated and therefore exempt under CRECNO, may very well be available *to only* the federal agencies requiring their submission, and not to academic researchers and policy analysts. Second, the exemption for “otherwise legal” classifications of medical research subjects and patients does not sufficiently protect public health research which may depend on neither patients nor medical research subjects.

Because of all of these concerns and open questions, the UC Academic Council, the executive committee of the Academic Senate, voted unanimously to oppose this proposition. The Academic Senate called upon our Board of Regents to do likewise and I am very pleased that they, like we, recognized that this proposed constitutional amendment will undermine the ability of the University of California to meet its obligations to the State and its citizens. I appreciate the opportunity to be here today and to be a small part of the effort to give the public the tools necessary to make an informed judgment.