



## **THE 21<sup>st</sup> CENTURY STRONG PUBLIC UNIVERSITY**

### **A Proposal for the Reform of the Structure of the Board of Regents of the University of California**

December 7<sup>th</sup>, 2009

## Summary

This report presents specific rationales, proposals and avenues for reforming the Board of Regents of the University of California to make the Board more democratic, and more representative of accountable to the people of California, including constituents of the University (students, faculty, and staff). The existing 26-member Board – composed of 18 appointees by the Governor, 1 student, and 7 ex-officio members – is structurally unable to meet today’s challenges of public higher education. The UC system is encountering dramatic inequality, declining support for public services, rapid technological change, and political stalemates, and yet the response by successive Boards has been woefully inadequate. In contrast, new approaches to tackling UC’s challenges require a new, hybrid Board structure that integrates appointees by the Governor and Legislature, ex-officio members, and Regents elected by faculty, staff, and students. This more diverse, accountable array of Regents will provide the skills, energy, insight and responsiveness needed for a world-class, public UC system to flourish in the 21<sup>st</sup> Century in excellence, access and public service.

Reforms are direly needed as the existing, out-dated structure of the Board of Regents was last updated over 33 years ago when California and its challenges were dramatically different.

About every 50 years, concerned reformers have adapted the state’s constitutional provisions on UC Regents’ structure to suit new contexts and new challenges. Without updates, the UC Board would still have meetings in secret, would have Regents serving 16-year terms, would have no alumni and student members nor faculty representatives, would have fewer women and ethnic minorities, and would still have one obligatory Regent from the Mechanics Institute of San Francisco. Through cutting edge reforms to its Board, UC can be a leader, beyond even the four state university systems that currently publically elect most or all of their Boards of Regents.

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*“This report is a working draft to facilitate – and be enriched by – serious analysis and discussion of how to improve the governance structure of the UC Board of Regents”*

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## Rationale for Reform

Widespread concerns about public higher education in the University of California system often focus on disparate symptoms – rising fees, low wages, imperiled pension plans, re-segregation, and management scandals – that nearly all ultimately share common roots in the inappropriate structure and dynamics of the UC Board of Regents.

There are at least six key structural flaws in the current design of the Board of Regents that prevent the University of California from achieving its goals of access, excellence and public benefit. There is insufficient representation of UC students, staff and associate and tenured faculty, who are key stakeholders with valuable insight, skills and experience to contribute. The Regents lack clear overarching responsibilities and roles. There are inadequate incentives for Regents to engage with the public and to ensure public views and concerns influence the practices and decisions of the BoR. And excessive term lengths for appointees hinder the ability to ensure that the Board is composed of responsive, competent, engaged, responsible Regents. In addition to these problems in the design of the BoR, there are also flaws in the practices of the Regents, and in the associated processes of selecting Regents. These flaws in practice include a lack of educational experience by Regents, poor attendance, insufficient oversight (on administration, compensation, public engagement, lab management, and environmental impacts), conflicts of interest.

### *Proposed Structure*

The strongest way to address the current deficiencies in principle and practice of the UC Board of Regents is through a new hybrid structure, which integrates appointees by the Governor and Legislature, ex-officio members, and Regents elected specifically by citizens and by UC faculty, staff, and students. In addition, new rules will define clear roles, responsibilities, and requirements for UC Regents, and allow for recall of elected Regents serving 6-year terms who fail to meet their obligations.

This report also describes specific alternatives, options, risks, and ways to mitigate concerns, such as the influence of money in politics, institutional memory, and/or requisite skill bases. Students, staff, and faculty can elect Regents through slight modifications of the standard, spending-restricted student government elections held annually on all 10 UC campuses. General public elections of several of the 26 Regents can be organized through specific districts, on a non-partisan, ranked-choice basis with limited public financing available to qualified candidates. Staggered terms and required training would preserve institutional memory and ensure new Regents have sufficient insight required for their duties. As faculty, staff, students and the public participate in the selection of Regents they will gain a greater interest in and appreciation of the complex process of governing the UC system. Likewise, Regents will form closer relationships with these groups, as well as obtaining deeper understandings of California's challenges and priorities and how they can be met.

### *Next Steps: Process for Reform*

To reform the structure of the Board of Regents requires a constitutional amendment, which can be achieved through one of three avenues: a ballot proposition, a constitutional convention, or a state initiative. Before fully pursuing these avenues, a wide process of deliberation is needed by key stakeholders, such as faculty associations, administrators, legislators, student associations, and citizen groups. Deliberations are needed to discuss various options, modifications and their tradeoffs. Through such deliberation, reformers can develop a broad commitment to a specific, proposed new structure.

Each of the three avenues for reform – a proposition, convention or initiative – as it's own distinct characteristics and tradeoffs, which must be carefully considered. To see if a ballot proposition is feasible, polling may help. A ballot proposition would likely require large amounts of volunteering and financial support for public awareness and for collecting the approximately one million signatures needed to place a measure on the ballot. Momentum is growing for the second possible avenue, a constitutional convention, which would aim to reduce the frequent political stalemates in the state legislature. Achieving reform of the Board through a constitutional convention would require the support of those people convening the convention and defining the scope, as well as the delegates, all

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of which are uncertain at the moment. The third avenue is for the California Legislature to approve putting a constitutional amendment up for vote in a general election. This third avenue would require skillful lobbying of legislators and engagement with their key political, financial, and electoral supporters.

Reform of the UC Board of Regents cannot solve all of the UC system's problems, but is essential for the UC to flourish as one of the world's top public higher education systems. Because the past, present and future of the UC and California are so tightly interwoven, improving the UC Board will also be complementary to broader processes of reforming California's society, economy and political institutions.

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**7.4.11 2009 - SCA 21 LEGISLATURE & AUTONOMY**

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## ACRONYMS

AAUC	Alumni Association of the University of California
AB	Assembly Bill
ACA	Assembly Constitutional Amendment
BoR	Board of Regents
CA	California
COI	Conflict of Interest
CRU	Committee for a Responsible University
CSU	California State University
EIR	Environmental Impact Review
OGC	Office of the General Counsel
SB	Senate Bill
SCA	Senate Constitutional Amendment
UC	University of California
UCB	UC Berkeley
UCOP	University of California Office of the President
UCSA	University of California Students' Association

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“Education is not filling a bucket but lighting a fire”  
*William B. Yeats*

“The things that will destroy us are politics without principle, pleasure without conscience, wealth without work, knowledge without character, business without morality, science without humanity, and worship without sacrifice”  
*Mahatma Gandhi*

## Preface

This report has been written after years of consultation and discussion with hundreds of citizens, entrepreneurs, associate and tenured faculty, graduate students, historians, immigrants, journalists, lecturers, non-governmental organizations, post-docs, staff, researchers, state senators and assembly members, student movements, undergraduate students, unions and university administrators – who have generously offered their time, energy and insight to enrich its findings. They however are not responsible for the claims and any errors made herein. It is also based on an extensive review of literature, news papers, policies, regulations and laws.

It is anticipated that this report will be revised and improved based on feedback. To stay updated on subsequent drafts, and to find more information, news, events, and ways to get involved, please visit <http://www.ucdemocracy.org>

## 1. Introduction

This report presents specific rationales, proposals and avenues for reforming the Board of Regents of the University of California to make the Board more democratic, and more representative of accountable to the people of California, including the constituents of the University (students, faculty, and staff). The existing 26-member Board – composed of 18 appointees by the Governor, 1 student, and 7 ex-officio members – is structurally unable to meet today’s challenges of public higher education. The UC system is encountering dramatic inequality, declining support for public services, rapid technological change, and political stalemates, and yet the response by successive Boards has been woefully inadequate. In contrast, new approaches to tackling UC’s challenges require a new, hybrid Board structure that integrates appointees by the Governor and Legislature, ex-officio members, and Regents elected by faculty, staff, and students. This more diverse, accountable array of Regents will provide the skills, energy, insight and responsiveness needed for a world-class, public UC system to flourish in the 21<sup>st</sup> Century in excellence, access and public service.

The UC Regents are responsible for overseeing the operation of the entire 10 campus University system as well as the three national laboratories. The Regents oversee the UC system as a semi-autonomous “public trust” not subject to local laws, with more than 220,000 students, 170,000 faculty and staff, its own police force, and an annual budget of roughly \$20 billion.

About every 50 years, the University of California’s Board of Regent has been restructured to suit new contexts and new challenges. It has been 33 years since the last change. Without such essential update s of California’s constitutional rules for the UC, the Regents would still by choosing their own replacements, Board meetings would still be held in secret, the Board would have no alumni and student members nor faculty representatives, would have fewer women and ethnic minorities, and we would still have one obligatory Regent from the Mechanics Institute of San Francisco! The Board of Regents (BoR) has come to take its current form through years of struggle for top quality public education and social justice, but there is more still to be done. A more democratic UC Board is both urgently needed and a very real possibility in the next few years. Currently, four other states publically elect most or all of the members of their university Boards of Regents. It is now time to realize calls for a more democratic UC Board of Regents, which date from shortly after the University was established in 1868.

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*“This proposal is a working draft to facilitate – and be enriched by – serious analysis and discussion of how to improve the governance structure of the UC Board of Regents”*

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In so doing, we must learn from and build on the significant – but insufficient – set of changes to the BoR came almost a century later, in the 1970s. These changes after the political turbulence of the 1960s and after a Legislative commission in 1970 assessing California’s Master Plan for Higher Education recommended a more democratic Board. However, significant changes in public higher-education have occurred in the past several decades that now again warrant improving the UC Board. This report is a working draft that will hopefully spark – and be enriched by – serious analysis and discussion of an improved governance structure of the UC Board.

The four main chapters of this report cover the historical and present structures of the Board of Regents, rationale for reforming the BoR structures, a proposed new structure, and avenues of reform for achieving a new BoR structure.

## 1.1 Contemporary Challenges

A range of new challenge face the University of California system since its governing structure was last substantially revised. Four changes are particularly important:

- (1) the rising significance and rapidity of technological change
- (2) California's changed role in the international economic system
- (3) the changing population of California
- (4) structural shifts in California's own political economy

In sum, California has ridden successive waves of economic growth since the 1970s, particularly as international trade has increased (especially with Latin America and East Asia), and particularly as new industries have developed around new technologies (largely computing and internet at first, followed by biological technologies, and now environmental or 'green' technology). However, economic inequality also has grown to unprecedented proportions, with money increasingly influencing politics, resulting in gridlock and dire sentiments about California's decline and future. The post-World War II politics of promise soured into the politics of fear, and California's education system – once at the nation's forefront – fell to 48<sup>th</sup> place, while state spending on prisons grew to the largest in the US.

This is a long way from the contentious days of early statehood, when a semi-autonomous Board of Regents was believed to be necessary to shelter a young and growing university from the "political winds" of the heady gold rush frontier days. 140 years later, that very UC Board of Regents has itself now become so fetid and entangled with the forces of the state's malaise that it is stifling the very education system it was designed to promote; it is no longer adequately serving its function.

California's widespread public sector difficulties warrant a concerted and coordinated effort to repair the state. Such efforts are not helped by the strategy the Board has taken – a narrow, focus on shifting away from the funding from the state (denigrated as "an unreliable partner") and towards a reliance on raising fees, constant requests for private donations, and escalating deals with large corporations. The current public mobilization to defend and promote public education – as part of a broader struggle for public goods – is inimical to an approach that sets fees and salaries based on comparison with other "competitors" on some fanciful notion of "market rates" that implicitly presumes education is a commodity that can be bought and sold like any other.

The key catalyst to enabling the UC Board of Regents to renew California's public education is the sanitizing sunlight of public participation. Our current challenges are of such immensity, rapidity and deep social import that new mechanisms are needed to ensure an agile, responsive Board, one that can help propel the UC out of turbulence and into renewed access, excellence and public service.

## 1.2 Existing Structure

The structure of the UC Regents and the process by which they are chosen is displayed in Figure 1 below. The UC Board of Regents currently consists of 26 members, who together are responsible for approving the main decisions shaping the University of California system, including management,

enrollment, fees, budgets, supervision of the three national laboratories, construction, coordination, and top hires (such as the UC President, Chancellors, and Directors). The basic structure of the Regents is set by California's constitution, but on a day-to-day practical level, they are governed according to by-laws, policies, and standing orders that they ultimately devise for themselves. The Regents' by-laws, policies, and standing orders are sometimes also coordinated with the UC's legal division, California state law, and California's court system.

Of the 26 members of the UC Board of Regents, 18 are appointees of the Governor, 7 serve based on holding another position ("ex-officio"), and 1 is a student. The appointees serve 12-year terms, students 1 year-terms, and ex-officio members for the duration they hold their official position. In addition, 2 non-voting faculty representatives attend board meetings (but are not Regents) by virtue of their positions as the Academic Senate chair and vice-chair.

The ex-officio Regents include:

- 1) Governor
- 2) Lieutenant Governor
- 3) Speaker of the assembly
- 4) Superintendent of public education
- 5) President of the UC
- 6) President of the UC Alumni Association
- 7) Vice-President of the UC alumni Association

The Board of Regents also now has 10 committees, though the number has varied historically:<sup>1</sup>

- 1) Compliance and Audit
- 2) Compensation
- 3) Educational Policy
- 4) Finance
- 5) Governance
- 6) Grounds and Buildings
- 7) Health Services
- 8) Investments
- 9) Long Range Planning
- 10) Oversight of the Department of Energy Laboratories

The committee on compensation was created as part of efforts to address the UC pay scandals that came to light in 2005 (see section 2.9.2 below). In addition, in 2009 a one-year trial began of a special committee on student and alumni affairs, the purpose of which was to foster greater dialogue. In practice, many – if not nearly all – decisions are effectively made by the committee votes, and then merely rubber-stamped by the legally binding vote of the whole Board of Regents.

The Regents are not paid, but are reimbursed for their expenses. However, the position has been said to be one of high prestige.<sup>2</sup> Typically, four to five meetings are held each year at different UC campuses,

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<sup>1</sup> For example, there were 10 committees when the UC was first created in 1868, but only 6 committees by 1965 (UCHDA 1965).

<sup>2</sup> News articles; internet account

with occasional supplementary meetings or special committee meetings. Logistical support for the Regents is coordinated by the UC Office of the President (UCOP), based in Oakland.

### 1.3 Current Selection Process

The different types of Regents are selected through a range of different processes. These are summarized in Figure 1 on the next page. Just the basic details of the selection process are given here; subsequent sections of the report discuss some of the key issues, problems and challenges with the current selection process, as well as new models to be pursued.

#### 1.3.1 Appointees

When the Governor makes nominations to fill any of the 18 slots for appointees, s/he is supposed to consult with an advisory committee consisting of 11 members (the problems in practice with this committee are detailed in section 2.11.1 below). The Governor's nominees must be confirmed by a simple majority of the California State Senate, which in practice occurs after hearings by the Senate Rules Committee. The Senate nearly always gives rubber-stamp approval the Governor's nominees (see section 2.11.2 below).

#### 1.3.2 Student Regent

The one student regent is selected by the other Regents from a pool of three students nominated by the University of California Student Association, after reviewing applications from students. Those applications are reviewed by committees in northern and southern California. Student regents serve for one year, after one year of familiarization as a student regent designate.

#### 1.3.3 Ex-officio

Similarly, the ex-officio Regents from the Alumni Association of the University of California (AAUC) also spend one year with familiarization as Regent designates. From materials available on the Alumni Association's website, it is not clear how the President and Vice-President of the AAUC are selected, or on which criteria. It is not clear what training the other ex-officio members receive to serve as Regents. The governor and lieutenant governor are elected through general elections and serve 4 year terms. The Speaker of the Assembly is chosen from amongst the Assembly through a vote of the members of the Assembly. The superintendent of public education is elected through general elections on a non-partisan basis for a term of four years.

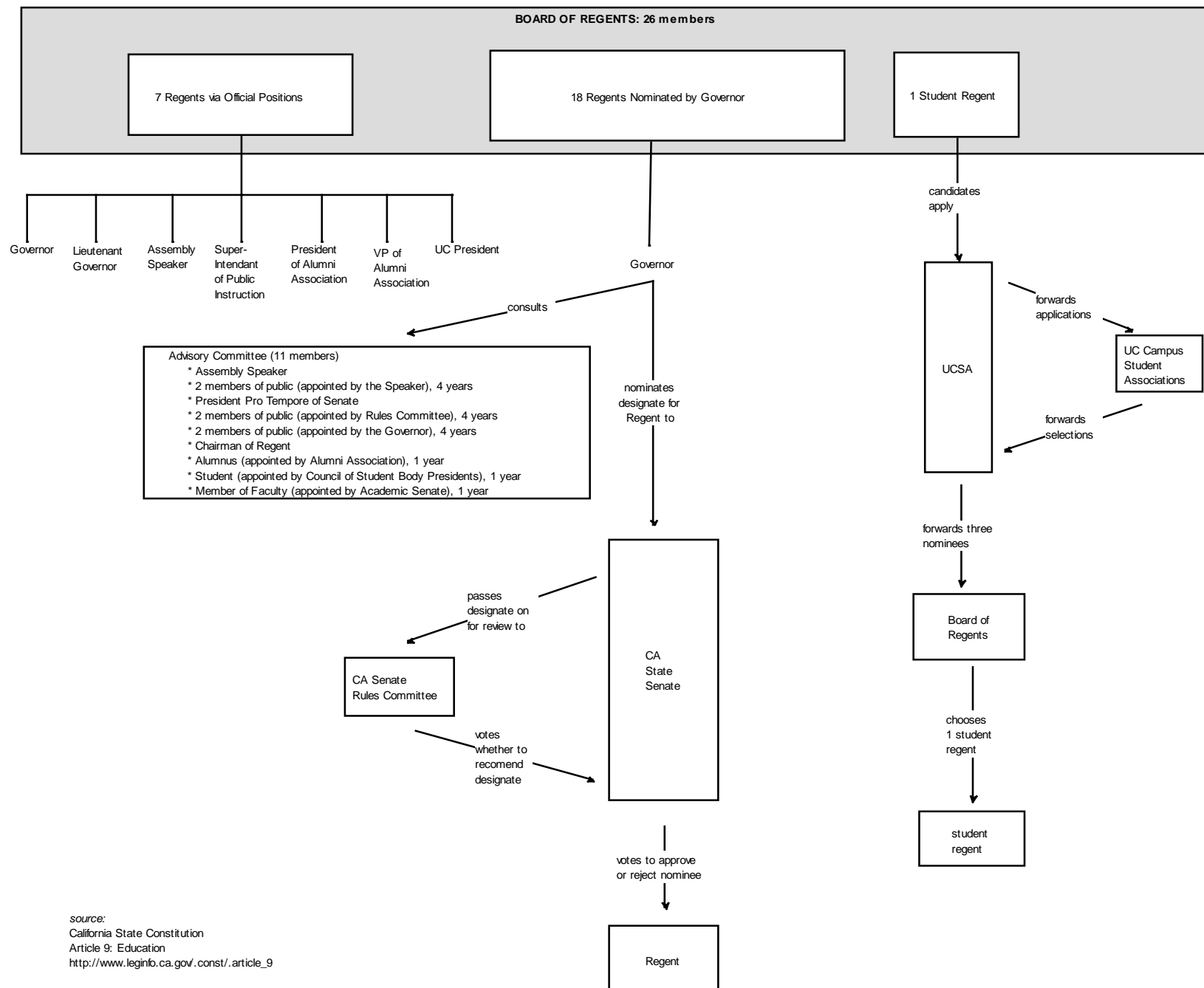
## 1.2 Previous Changes in the Structure of the Board of Regents

The Board of Regents – likely any institution that seeks to be effective – must be periodically updated and improved based on new contexts and new insights. The proposed changes to the BoR that this report outlines are not the first changes to the BoR, nor will they be the last. This section outlines the major changes made to the Board of Regents, how they were made, and under what conditions. Key legislation that reformed the Regents is included in the appendices. Many similar debates and challenges to instituting reforms existed in the past, and thus learning from history is essential to fully understanding and putting in perspective current dilemmas and ways forward. This section provides a historical corrective to selective, depoliticizing accounts produced by the UC, as well as more sensational accounts of UC history that focus on confrontational protests in isolation from broader structural, institutional changes in UC governance.<sup>3</sup>

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<sup>3</sup> Pelfrey (2004).

Figure 1: Selection Process for the UC Board of Regents



source:  
California State Constitution  
Article 9: Education  
[http://www.leginfo.ca.gov/.const/.article\\_9](http://www.leginfo.ca.gov/.const/.article_9)

The University of California’s Board of Regents first met on June 9<sup>th</sup>, 1868. The next decade was one of great political and economic change in California (and much of the world at large). The original forms of governing the university were shaped by UC President Daniel C. Gilman, who touted the elitist models of Michigan and Yale (where trustees appoint their personal friends as successors).<sup>4</sup> And indeed Republican businessmen were appointed as the first UC Regents, then serving 16-year terms. There were originally 22 members of the BoR, with 6 ex-officio, 8 appointed by the governor, and 8 selected by the existing 14 ex-officio and governor-appointed Regents. Several Regents ended up serving for dozens of years.

In 1874, a coalition upset with corrupt state politics and a university astray decided to challenge the university’s power structures. They lamented that Regents consisted of “merchants, lawyers, physicians and devines [sic]” and lacked any “practical and experienced educator” or any working class representative. The coalition proposed legislation to choose Regents through elections in each of California’s districts (and also to prevent sex discrimination in enrollment). This legislation, along with a similar bill in 1876 (Carpenter and Curtis’ Bills), was defeated by a corrupt, privileged state legislature. When California’s Constitution was revised a few years later in 1879, negotiators snuck an even stronger anti-democratic provision in at the last minute with little debate, which established the current structure of the UC Regents.<sup>5</sup>

**Table 1: Chronology of Changes to the UC Board of Regents**

Year	Change	Method
1868	Original	Organic Act
1879	Public Trust	Constitutional Convention
1918	Removed Senate approval of Governor-nominated Regents; replaced 8 internally selected Regents with 8 more Governor appointments; 2 ex-officio Regents added; increased financial control;	Senate Constitutional Amendment
1972	Public Meetings	Proposition 5
1974	Student and Faculty Regents; 12-year terms; Reflect CA composition; advisory committee to Governor’s nominees.	Proposition 4
1976	Explicit prohibition on denying admission based on race, religion, and ethnic heritage; competitive bidding for contracts and sales.	

<sup>4</sup> Daniel Gilman was also a member of Yale’s infamous elite secret society, Skull & Bonesman.

<sup>5</sup> See Douglass (2000, 1992) and Pelfrey (2004) for helpful histories, though not without particular slants.



The influence of economic interests was apparent in the governor's appointees, as well as the two ex-officio members of the BoR: the President of the Mechanic's Institute of San Francisco and the President of the State Board of Agriculture.<sup>6</sup>

Although the significant changes in 1918 have not been thoroughly documented yet, there are some key points.<sup>7</sup> The 1918 essentially concentrated power in the Governor's hands. The 1918 changes actually reversed democratic influence on the Regents by eliminating the State Senate's role in approving the governor's appointments of Regents.<sup>8</sup> It was argued that the approval process had become too politicized after a number of nominees were blocked (beginning in 1883 with the Democratic Party's rejection of Leland Stanford as a Regent). The 1918 amendments also shifted 8 more Regent appointments into the Governor's hands (Regents for those 8 slots were hitherto selected by sitting Regents). Other 1918 changes included giving the Regents more financial control, and adding two ex-officio Regents.

The next round of changes in the UC Board of Regents came largely as a direct outcome of the turbulence of the 1960s, though there were some earlier stirrings for more democratic control (for example, Senate confirmation of nominated Regents was urged in 1958).<sup>9</sup> Though the Free Speech Movement and anti-war protests are well known and widely lauded, few recognize that one of the key demands of the Free Speech Movement was for a more democratic Board of Regents.<sup>10</sup> Much of the effort to reform the Board of Regents came as a result of years of concerns, legal refutation, protests of Regents' actions. For example, the Regents sparked great controversy in 1950 when they dismissed 31 faculty for not signing the University's McCarthyite anti-communist "Loyalty Oath."<sup>11</sup> In 1970, questions were raised about conflicts of interest in Regent's decisions, after the University invested millions in a Chicago bank involved in a deal with the Pauley Petroleum company owned by Regent Edwin Pauley.<sup>12</sup> The deal reportedly netted the UC \$20,000 and Pauley an \$800,000 tax write-off.<sup>13</sup> In 1972, the American Association of University Professors censure the Regents, and the Supreme Court ruled the Regents had acted unconstitutionally when they approved the dismissal of two professors based on the professors' political beliefs.<sup>14</sup>

Figure 2: UCLA Regent Protests, 1969



*Student protests at UCLA in 1969 led to legislation requiring Regent meetings to be open to the public.*

<sup>6</sup> Pusser and Ordorika (2001).

<sup>7</sup> Note 1918 was also the year Thorsten Veblin published his critique of business control of universities and colleges (in *Higher Learning in America*).

<sup>8</sup> UCHDA (1965).

<sup>9</sup> (1958) UC Board Confirmation by State Senate Urged, *LA Times*, March 11.

<sup>10</sup> Kaufman and Folsom (1965).

<sup>11</sup> Pelfrey (2004: 34-35); Kerr et al (2001: 27-47).

<sup>12</sup> OAG (1970). Greenwood, N. (1970) 'Probe Stirs Question: Regents—UC Deals: Who Benefits Most?', *LA Times*, Oct 29.

<sup>13</sup> Benet (1972).

<sup>14</sup> (1972) Calif. Regents Censured by AAUP in Davis Case, *Washington Post*, May 6; Trombley, W. (1972) Supreme Court Rejects Firing of Angela Davis, *Los Angeles Times*, Oct 10.



In 1968 the state assembly approved constitutional amendment legislation requiring the Regents to hold open meetings, but the legislation died in the Senate. It would eventually become law in June 1972 after voters approved Proposition 5.<sup>15</sup> Over the years 1968-1975, numerous attempts (described below) would be made to institute changes to the Board of Regents, with several significant reforms achieving success (summarized in Table 1 above).

The protests of the 1960s have been extensively documented. Key moments were the Free Speech Movement, the struggle for Peoples' Park, and anti-war demonstrations. These protests were part of a broader world-wide mobilization, often led or sparked by students.<sup>16</sup>

In the first days of June 1969, the state Assembly passed constitutional amendment by 66 to 1, to put a proposition on the ballot to decide if Regent meetings should be public. On February 2<sup>nd</sup>, 1970 California state assemblyman John Vasconcellos of San Jose introduced a constitutional amendment (ACA 28) to add two students, two faculty, and one alumni to the Board, and to reduce Board terms from 16 to 9 years.<sup>17</sup> In the state senate, a complementary bill was authored by state senator H.L. Richardson (R-Arcadia) to put a measure on the ballot to reduce Regent's terms from 16 to 12 years, and to require Senate confirmation of Governor's appointments. Richardson argued that shorter terms and required confirmation would make UC regents respond more to the public's wishes.<sup>18</sup> The vote on Richard's bill was 25-8, which was 2 votes short of the needed 2/3rds majority.

Nonetheless, in 1970 Proposition 7 was put on the Ballot to make the Speaker of the Assembly a voting member of the Regents, but apparently was not approved. In February 1971, students worked hard to get a student on the board with full voting rights.<sup>19 20</sup>

These various efforts eventually culminated in 1974 in Proposition 4, a landmark piece of legislation reforming the Board of Regents. Among the start of these efforts was the passage, on June 14<sup>th</sup>, 1971, by the CA senate of a constitutional amendment (SCA 44) to require that the governor's nomination for Regents require Senate approval.<sup>21</sup>

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*"The group that's on the board now is the most political of all, representing only 2 percent or 3 percent of the wealthy individuals and established corporations of the state"*

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State Senator John Vasconcellos, 1973

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A critical part of the pressure to reform the Regents was a 2-year study released in September 1973 by a joint legislative committee to review California's Master Plan for Higher Education.<sup>22</sup> The study proposed constitutional changes to the Board of Regents because "the board does not reflect the state's population and is not in keeping with the times," according to the committee chair, Assemblyman John Vasconcellos (D-San Jose).

<sup>15</sup> In Statues 1971, page 4500, Resolution Chapter 261, SCA 44

<sup>16</sup> See Watts 1968 and all that.

<sup>17</sup> LAT 1970 Day in Sacramento, February 3.

<sup>18</sup> LAT 1970 Senate Rejects Plan to Cut Regent Terms, June 30, a2.

<sup>19</sup> LAT 1970 Students' drive for part in UC affairs gaining, Feb 19.

<sup>20</sup> Only by 1975, was this was finally happening. Speech, D. 1975 Inclusion of student on UC Board of Regents Advances, LAT, Feb 13.

<sup>21</sup> LAT 1971 The Day in Sacramento, June 15.

<sup>22</sup> Vasconcellos et al (1973).

In 1974, Assembly Constitutional Amendment 83 (ACA 83) sought to shorten Regents' terms from 16 to 8 years. It proposed that the governor would select his nominees from a list of 5 candidates chosen by a new Higher Education Nominating Committee (made up of the state superintendent of public instruction, the speaker of the assembly, the president pro tem of the Senate, opposition leaders in both legislative houses, the chairman of the Board of Regents, and representatives of UC students, faculty members and alumni).<sup>23</sup>

In 1974, UC mounted a campaign against the ACA 83. The UC President sent a letter to 1,200 'friends of the university.' UC alumni groups were urged to contact their representatives in opposition. Regent William Forbes said the amendment "seeks to change a basic part of a university system that is one of the really valuable assets of the state and has proved itself nationally and internationally." Regent chairman Dean A Watkins said "the most objectionable part of ACA 83 is that the appointment process it establishes would completely politicize the appointment of regents." Vasconcellos responded "Now you've got one person, the governor, who is partisan and unscreened, making all the selections ... Our proposal balances out the politics. It calls for the pluralistic politics the state needs instead of the kind of isolated politics now practiced by the board."<sup>24</sup>

An alternative bill, Senate Constitutional Amendment 45 was developed in partnership with State Sen. Albert Rodda (D-Sacramento).<sup>25</sup>

The state Superintendent of Public Instruction backed the amendment to reduce Regent's term lengths from 16 to 12 years.<sup>26</sup> In 1974, Moscone submitted a bill (SB 2352) to require that the

Regents could only hold executive sessions to "consider appointments or employment of a person who is not performing services for or is not employed by university." In November 1974, voters approved changes via Proposition 4. An advisory board was set up to review the governor's appointees and Regents were required to reflect the economic, social and cultural aspects of the California population. A student Regent was added; however, even though faculty were granted the right to have 2 voting Regents, the UC Academic Council declined after discussion, and, for reasons that are unclear, settled on having non-voting faculty representatives on the Board.<sup>27</sup>

Discussion and proposals about reforming the Regents resurfaced in 1992 during the budget crises of the early 1990s.<sup>28</sup> There were at least three triggers: (1) Governor Wilson nominated John Davies, a close friend and campaign donor, to be a Regent; (2) a state auditor found lavish travel and entertainment allowances; and (3) the Regents secretly approved a major retirement benefits package of around \$1 million for the outgoing UC President David Gardner. All this occurred amidst severe

Figure 3: 1974 Editorial by the Los Angeles Times



<sup>23</sup> LAT 1974 UC Campaigns Against Cut in Regents' Terms, Jan 13, 3.

<sup>24</sup> Trombley, William 1974 UC Campaigns Against Cut in Regents' Terms

<sup>25</sup> LAT 1974 Softer Regent Amendment Seen Headed for Legislative Passage, Jun 23, b1.

<sup>26</sup> LAT 1974 Riles Backs Measure to Cut Regents' Terms, Jun 15, A24.

<sup>27</sup> Notice of Meeting of the Assembly of the Academic Senate, Dec 4, 1975,

<http://content.cdlib.org/xtf/view?docId=hb2h4nb0xn&doc.view=content&chunk.id=div00023&toc.depth=1&brand=calisphere&anchor.id=0>

<sup>28</sup> Lapin, L (1992) UC Regents of the People? Legion of Critics Thinks Not, *Sacramento Bee*, July 26.

budget crisis and hikes in student fees. Similar concerns were also voiced about the elitist nature of the CSU Trustees.<sup>29</sup>

In early 1993, Senator Quentin Kopp and Senator Tom Hayden introduced SCA 2 to reduce the governor-appointed Regents to 6, and to have 6 Regents appointed by the Legislature, as well as to reduce term lengths to 8 years.<sup>30</sup> The Assembly passed complimentary Bills, ACA 20 and ACA 11, in May, with the backing of the UCSA.<sup>31</sup> Tom Hayden sponsored three bills to reform the UC Regent selection process. One required public hearings of candidates. The others prohibited nominating Regents who had contributed over \$1000 to the governor in the past four years.<sup>32</sup> In September, the legislature approved a Bill requiring Regents to vote in public session when considering executive compensation.<sup>33</sup> A number of groups joined to combat Davies' nomination, including Common Cause, the UCSA, the National Organization for Women, the Latino Issues Forum, and others.<sup>34</sup> Davies was eventually confirmed, but another Wilson nominee, Lester Lee, was rejected by the Senate for the first time 111 years.

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*"We need Regents whose commitment  
is to higher education, not the  
governors' political needs"*

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State Senator Tom Hayden, 1993

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Further discussion of the need to democratize the Regents arose after 2000 with increased attention to the role of UC-managed energy laboratories in producing a new round of nuclear weapons.<sup>35</sup> A number of other issues in the mid 2000s – including lab mismanagement, executive compensation scandals, controversial industry-university deals, poor labor practices, and rising student fees – once again placed the issue of Regent reform on the agenda. And most recently, the role of the Regents amidst the budget cuts of 2009 has come to the fore due to their role in granting UC President "emergency authority," and in approving drastic fee hikes, layoffs and furloughs even as they grant pay raises large salaries to top executives.

<sup>29</sup> OAG (1992); Lapin, L (1992) UC Vows to Cut Entertainment, Trips in Response to State Audit, *Sacramento Bee*, Oct. 30; Monteagudo, L. (1993) Hayden, CSU Students Call for Trustee Reforms, *Press-Telegram*, April 27.

<sup>30</sup> Kopp, Q. (1993) Letter, *Sacramento Bee*, Feb. 17.

<sup>31</sup> Lapin, L (1993) Proposals to Limit UC Regent Terms, Exec Pay Advance, *Sacramento Bee*, May 19.

<sup>32</sup> (1993) Trustees Attacked as Elitist, *SJ Mercury News*, April 28.

<sup>33</sup> Rooney, G. (1993) Bill Making Votes on UC Pay Public is Approved, *Press-Enterprise*, Sep. 11.

<sup>34</sup> Koury, Renee (1993) UC Regents' Selection Under Fire – State Senators Aim to Reform the Process for Picking Board Members, *SJ Mercury News*, March 7.

<sup>35</sup> E.g. Collonge, C. (2005) Demilitarize UC, Democratize the Regents, *Daily Cal*, Aug. 8., and <http://www.ucnuclearfree.org/>

## 2. Rationale for Contemporary Reform

The widespread concern about public higher education in California often focuses on disparate symptoms – rising fees, low wages, imperiled pension plans, re-segregation, and management scandals – that nearly all ultimately share common roots in the inappropriate structure and dynamics of the UC Board of Regents.

In response to public outcry, top UC management has attempted to defend itself, shifting the blame for all these problems to the state government in Sacramento.<sup>36</sup> However, as the discussion above and below illustrate, the Regents are very much part of the same dysfunctional institutional network in Sacramento that is threatening the state's public services.

Various different groups of people have a range of concerns about the limits of the current BoR structure, and these groups have various reasons for wishing to reform the BoR structure. These different groups range from the day-to-day person on the street who may read stories about compensation scandals or increasing fees, to top management figures such as Berkeley Chancellor Robert Birgeneau and state Assembly Majority Leader Albert Torrico.<sup>37</sup>

The various reasons why the Board of Regents ought to be restructured are organized and analyzed in the paragraphs below. This section of the report is divided into two parts. Part A discusses how the existing BoR structure is inadequate or inappropriate in principle and design. Part B discusses how, given such design, there are also problematic practices in both the selection of, and the work of, the Regents. The case for reform is thus based on problems in both the legal structure and actual practices of the Board of Regents.

### PART A: PRINCIPLES & DESIGN

There are at least six key structural flaws in the Board of Regents that prevent the University of California from achieving its goals of access, excellence and public benefit. There is insufficient representation of UC students, staff and associate and tenured faculty, who are key stakeholders with valuable insight, skills and experience to contribute. The Regents lack clear overarching responsibilities and roles. There are inadequate incentives for Regents to engage with the public and to ensure public views and concerns shape the practices and decisions of the BoR. And excessive term lengths for appointees hinder the ability to ensure that the Board is composed of responsive, competent, engaged, responsible Regents.

#### 2.1 Inadequate Representation of Key Stakeholders

There is insufficient representation of UC students, staff and associate and tenured faculty, who are key stakeholders with valuable insight, skills and experience to contribute

<sup>36</sup> Lehr, H.V. 2009 Beyond UC vs Sacramento: It's the Relationships that Matter, *Berkeley Daily Planet*, October 15.

<sup>37</sup> Comments at Public Forum, UC Berkeley, November, 2009.

### 2.1.1 No Voting Faculty Representation

Despite constitutional permission for UC faculty to have 2 voting members on the Board, faculty are only represented at Board meetings by 2 non-voting faculty members, which are the Chair and Vice-Chair of the UC System-wide Academic Senate. The notion of Shared Governance has historically been key to the UC system, and effectively means that decisions made by the UC Academic Senate are to be considered and respected by UCOP and the Regents. Shared Governance without a voting faculty representative on the BoR is shallow (and low faculty attendance to Academic Senate meetings is a real problem); faculty engagement on governance issues would arguably be increased if they had a real stake. Additionally, concerns have been raised that non-tenured faculty are a growing proportion of overall faculty (see chart below), but are not able to vote in UC campus Academic Senates. Numerous other universities have faculty representatives on their governing Boards (including Colorado, Kentucky, CUNY, North Dakota, West Virginia, and Puerto Rico).

### 2.1.2 No Representation of Non-Tenured Faculty

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*“Over 3,000 un-tenured faculty make up 37% of all UC faculty, but have no representative on the Board of Regents”*

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Equally important is that the observers on the BoR from the Academic Senate do not represent non-tenured faculty (the Academic Senate consists only of tenured faculty). In 2007, 37% of the UC’s 8,795 faculty were non-tenured (about the same percentage as in 1989).<sup>38</sup> The over 3,000 un-tenured faculty that make up 37% of all UC faculty have no dedicated institutional means of liaising with the Regents.

### 2.1.3 No Staff Representation

UC non-faculty staff are not represented on the Board. Staff currently make up a significant percentage of the total population in the UC system. The lack of staff representation has contributed to the Regents’ lack of understanding of, and inappropriate approach towards, work-place and union issues.

## 2.2 Lack of Clear Responsibilities and Duties

The process of selecting appropriate Regents has been hindered by the lack of a yardstick against which nominees and potential selections can be measured. The exact goals, requirements and responsibilities of UC Regents are not specified in the California Constitution nor in the UC Regents’ by-laws. Theoretically, there is no legal restriction preventing the Governor and legislature from appointing, for example, a 12-year old from Belgium, as a UC Regent. Because there are no clear, prominent and well-defined criteria for who should be a Regent, the governor is free to appoint friends and campaign donors, and the Senate has little guidance in its hearings and most often simply gives rubber stamp approval to the governor’s nominee. Regents have done little to spell out exactly and publically what are the duties and best qualities of effective Regents.<sup>39</sup>

## 2.3 Taxation without Representation

Taxes on citizens, businesses and sales in California have historically provided the bulk of funding for the UC system, though this has shifted towards increasingly reliance on fees, private donations, and deals with large corporations. However, the discretion on how these taxes are spent is effectively up to Regents, who, at best, are technically very indirect representatives of the people of California. Moreover, as student fees keep rising, students are being increasingly taxed without commiserate increases in representation on the Board that decides how their fees are being used. The present

<sup>38</sup> <http://www.ucop.edu/acadadv/datamgmt/ladd89s.pdf>

<sup>39</sup> The reasons for this are not clear, but may include indifference, a vision of the University as analogous to a corporation, and/or desire for leeway.

structure of the UC Regents was designed at a time when student ‘fees’ were minimal parts of the cost of education and the University’s overall revenues.

## 2.4 Inadequate Public Engagement

Given that citizens do not elect regents directly, and because the appointment process is often secretive and viewed skeptically, they have very little opportunity to become familiar and engaged with the Board of Regents. If the public becomes more familiar with Regents in the course of electoral campaigns, they are more likely to understand the needs and priorities of the University and are likely to be more willing to provide financial support.

However, the lack of public engagement goes both ways. Serving on appointed 12-year terms, Regents face little incentive to engage with the public and interpret their priorities.

## 2.5 Inadequate Public Consultation

Consultation is currently limited in by-laws to 3 minutes per person and 20 minutes per meeting.<sup>40</sup> In practice, this often is changed to 1 minute per person. This is an inadequate amount of time. Moreover, public comments are purely consultative – Regents are free to ignore public comments at their will. Some regents do not pay attention to public comments during the comment period, sometimes observed reading newspapers, sending text messages, or absent. The overall effect is one of shouting into the wind. There is no opportunity for dialogue, for the public to ask questions and receive answers.

## 2.6 Excessive Term-Length

12-year terms prevent Regents from being called to account for their actions, though the terms may facilitate experience and familiarity with the University and Board. 12-year terms may also generate a sense of complacency, and prevent fresh ideas and thinking.

## PART B: PRACTICES

The following sections discuss how, in addition to the inappropriate in-built structure of the Board of Regents discussed above, there are also flaws and omissions that allow poor practices by Regents, who are selected through defective processes. For example, the lack of defined principles on requirements and responsibilities of Regents (mentioned above) translates in practice into a Board that lacks people with significant experience in education. It is in fact not uncommon for Regents simply not to show up for Board meetings. Regents have in practice exercised poor oversight of the University, leading to administrative bloat, compensation irregularities, insufficient public engagement, poor management of the labs, and insufficient attention to environmental monitoring. In practice, the selection of the Regents has violated the Constitutional provisions prohibiting political allegiance, requiring consultation, and requiring that the BoR reflect the population of California. Consequently, practices of nepotism in the appointment process are rife and open secrets. The Board has historically been, and still remains, disproportionately made up of wealthy, white male businessmen and political insiders. The result has been a series of specific conflicts of interest, as well as a general approach of Regents antithetical to upholding the UC’s mission of access, excellence and public benefit.

<sup>40</sup> Public Comment Policy; <http://www.universityofcalifornia.edu/regents/pubcom.html>



## 2.7 Education Experience vs Business Reputation

None of the Regents are academics – except perhaps the student Regent – and none have a PhD. This has generally been the case throughout history also. This lacunae means that the Regents' internal discussions and decisions are not as informed by the actual experience of scholarship and teaching as they should be.

In contrast, Regents who are prominent businesspeople or financial managers depend heavily on their reputation, and this fact – rather than principles of educational development – sometimes drives Regents' decisions. As fiduciary stewards of the UC, Regents with substantial financial reputations face pressure to demonstrate their competitive corporate skills, which in effect translates into treating the University as a private, for-profit corporation (an elision that sometimes inadvertently finds its way into the rhetoric of UC staff).

## 2.8 Low Attendance

Regents' attendance at their own meetings has been very inconsistent, and ex-officio members in particular often do not show up. Governor Schwarzenegger appears to have never even attended a single Regents meeting.<sup>41</sup> At some meetings over the past few years, barely half the Regents bothered to show up. Lieutenant Governor Garamendi has consistently attended meetings, while his predecessor, assembly speaker Fabio Nuñez, made many, but not all, meetings.

Persistent attendance problems occur despite a 2004 controversy on the issue of attendance that forced UC Regent Haim Saban (an entertainment tycoon) to resign after he failed to attend any meetings for more than two years. Between 2000 and 2003, four of the appointed regents missed 1/3 of their meetings or more.<sup>42</sup> Regent Pattiz reportedly missed 62% of meetings between 2001-2004.<sup>43</sup> Some Regents said the record keeping was incorrect, though staff denied this.

The problem of poor attendance by Regents is both personal and structural. Concerns have been raised throughout history about the poor attendance of Regents.<sup>44</sup> Regents however have done little to spell out explicit expectations and rules on attendance. In fact, when concern was raised over poor attendance, rather than make significant reforms, the Regents attempted to cover up the problem by restructuring their roll-call practices to make it *more* difficult for the public to monitor.<sup>45</sup> The Regents also rejected a proposal to have the Chair contact any Regent missing three consecutive meetings. In response, in 2008 the UCSA made a move to start monitoring Regent attendance, but requires more resources in order to do so.<sup>46</sup>

## 2.9 Inadequate Oversight

Regents have provided inadequate oversight of the University on a number of key issues, including administrative bloat, budget transparency, compensation irregularities, public engagement, lab management, and conflicts of interest. When these problems arise, Regents have shifted the blame to

<sup>41</sup> This claim is based on a search of attendance in the minutes of the BoR. This pattern contrasts with that of former governors such as Brown and Reagan who would attend BoR meetings.

<sup>42</sup> Yang, E. (2004) Saban Quits Board of Regents, *San Diego Union-Tribune*, Sep. 9

<sup>43</sup> Yang, E. (2004) Some UC Regents Missing Majority of Board Meetings, *San Diego Union-Tribune*, July 8.

<sup>44</sup> E.g. (1973) "7 of UC Regents Have Perfect Attendance," *Los Angeles Times*, March 25.

<sup>45</sup> Yang, E. (2004) UC Regents Alter Meeting Attendance Procedure, *San Diego Union-Tribune*, July 9.

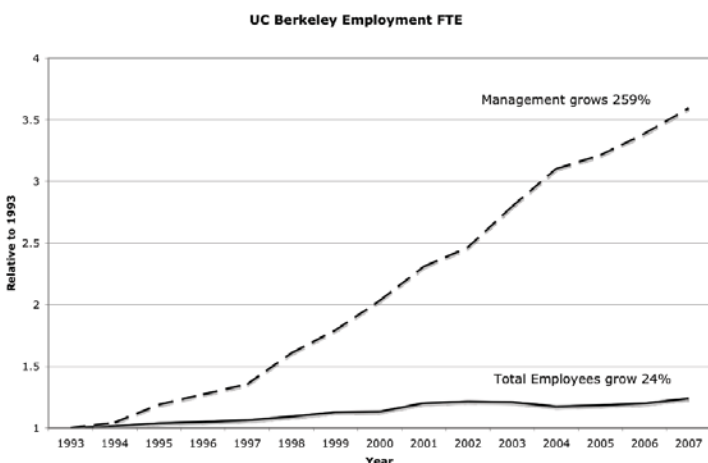
<sup>46</sup> Yang, E. (2004) UC Regents Mull Absenteeism, Will Develop Member Guidelines, *San Diego Union-Tribune*, Sep 23; Resolution #16: UC Board of Regents Accountability Act, UCSA, Board of Directors Agenda, Jan 12, 2008; <http://www.ucsa.org/board/agendas/January%202008%20Agenda.doc>

the perpetrators and promised to work to resolve the problem, but have almost never accepted responsibility for approving or selecting the staff and regulations, and their negligence in letting the situation get out of hand.

### 2.9.1 Administrative Bloat

Management positions and salaries, particular at the top levels, have grown greatly disproportionately to most of the rest of the university over the past decade (see Figure 4, for example), with the Regents either taking little notice, downplaying the trend, or outright defending it. The high-level administrative bloat results partly from the facets of Regents' selection, (in)experience and aloofness.

Figure 4: UCB Employment and Management Growth



Source: UC employment data<sup>47</sup>

### 2.9.2 Lack of Budget Transparency

The Regents have failed to ensure that the UC Budget is fully transparent. For years, Regents have hired budget staff and approved budgets that omit key information, and which present information in arcane, inaccessible, ambiguous manners.<sup>48</sup> This lack of budget transparency has inhibited engagement and understanding by the public and legislators, and reduced trust in and accountability of the UC management. This lack of transparency has fostered problems of administrative bloat (mentioned above), as well as numerous other problems such as compensation scandals and conflicts of interest (see below). Only under heavy public pressure and after repeated protests and demands has the UC Office of the President revamped its budget website and data (though, more often than not, designed to rebut criticism, rather than clearly present full information).

### 2.9.3 Compensation Irregularities

Major and widespread irregularities in compensation of top management under UC President Dynes came to light in 2005 only after in-depth investigations by the *SF Chronicle*, and became one of the most notable recent scandals.<sup>49</sup> While blame was largely cast at Dynes and advisors, and he and many staff resigned a year later, the compensation fiasco illustrates deep failures by the Regents to perform their

<sup>47</sup> See [http://socrates.berkeley.edu/~schwartz/Seminar/Seminar10\\_13\\_09.pdf](http://socrates.berkeley.edu/~schwartz/Seminar/Seminar10_13_09.pdf)

<sup>48</sup> Chief financial officer Peter Taylor has admitted the website has been inadequate.

<sup>49</sup> See: <http://berkeleyaft.org/sfchron/execpay> and [http://ucwatch.org/SFchronicles\\_series.html](http://ucwatch.org/SFchronicles_series.html)



duties and sufficiently monitor the administration and take close care in the actions the Regents approve. Once the scandal broke, the Regents, however, moved to position themselves as surprised but concerned supervisors who would clean house. Several audits, commissions and task forces were put into place.<sup>50</sup> Blame falls not only on President Dynes and his staff (who was selected by the Regents), but on the structure of the Board of Regents which fails to give sufficient incentives for close supervision – as a result these sorts of irregularities and scandals are not isolated nor rare (although not always on the same large scale).<sup>51</sup>

#### 2.9.4 Public Engagement

When Regents speak, they demonstrate a patronizing tone of the need to inform ignorant students, faculty, staff, and community members about the truth. Rather than take the approach of sincere dialogue, they state that they are bringing facts to combat misinformation and rumors. The notion that public comment can be squeezed into 20 minutes before a Board of Regents meeting is highly problematic.

But this is not an idiosyncratic feature of Regents' personalities. Rather, condescension is built into the Regental structure. Because they are unaccountable, Regents and their appointees face no recourse for their condescension. For example, Nathan Brostrom, in recent presentations has said nothing about the importance of raising public revenue. When asked about this, and about the effects of Proposition 13, he said such concerns were unrealistic. Chancellor Birgeneau likewise said it was "fantasy," though he has subsequently come out publicly for overturning Proposition 13.

#### 2.9.5 Lab Management

Controversy has dogged the UC for decades regarding its three national laboratories. Many have seriously questioned whether designing and building nuclear weapons is compatible with UC's basic mission, yet Regents have failed to rigorously consider the possibility of severing the connection between UC and the labs. Another set of concerns is about poor actual Regent oversight of the labs. After months of controversy, in early 2003, the director and auditor of Los Alamos National Laboratory resigned amidst financial mismanagement. The Energy Secretary then questioned whether UC could run the lab. Further problems and allegations arose throughout the next months, with UC fined roughly \$6 million for mismanagement. The University of Texas and Lockheed Martin joined in May 2005 to try to outbid the UC for the contract to manage the lab. Despite further examples of inappropriate practices, UC won renewal of management of the lab in December 2005.<sup>52</sup>

#### 2.9.6 Inadequate Consideration of EIRs

The lack of incentives for sufficient, impartial supervision by the Regents of the University is evident in the Regents' approval of numerous Environmental Impact Reviews (EIR) that were flawed in substance and/or process and subsequently challenged, revoked, or revised. The first of several examples is the EIR for the Energy Biosciences Institute in Strawberry Canyon in the Berkeley Hills, which the Regents approved but was subsequently found to be unviable. Community members sued the Regents, forcing a relocation of the site. Likewise, there were substantial substantive and procedural flaws in the planning documents for the nanotechnology lab (Molecular Foundry) and the Long Range Development Plan in Berkeley, as well as many more projects across the state and over decades.

<sup>50</sup> See: <http://www.universityofcalifornia.edu/news/compensation/reports.html>

<sup>51</sup> See Kapp (2007); cf Pelfrey (2008).

<sup>52</sup> (2005) UC's problems at Los Alamos Lab, *SF Chronicle*, 22 Dec.

## 2.10 Conflicts of Interest

The presence of significant conflicts of interest suggests on the one hand that certain Regents are ill-positioned to govern the UC properly, and on the other hand, that the process allowing such Regents to be selected failed to adequately consider these conflicts of interest (COI). COIs can take specific or general forms. The Regents have largely avoided sanction, if not occasional scrutiny, through a narrow definition of COI used by the UC. However, there are important issues of student loans, for-profit universities, construction, and research funding that pose serious questions about the practices of certain Regents and the practices of selecting those Regents.

### 2.10.1 Conflict of Interest Policy & Office of General Counsel

The bulk of UC's conflict of interest policy focuses on researchers and administrators, rather than the Regents themselves. Guidelines on and investigations into conflicts of interest are done by the UC's lawyers in the Office of the General Counsel. In some instances where potential Regent conflicts of interest have been identified, Regents have sometimes said that they seek legal advice from the General Counsel, and, if necessary, recuse themselves from relevant votes.

The University first reluctantly adopted a Conflict of Interest Code in 1980 as a requirement of California's 1974 Political Reform Act. A court had ruled in 1977 against the Regents' attempts (under pressure by some faculty) to avoid the state's requirements to have a policy on conflicts of interest (the Regents incorrectly claimed the University had autonomy from state law).<sup>53</sup>

From 1985-2005, the UC's top lawyer – the General Counsel – was James E Holst, who eventually resigned amidst the compensation scandal, and is now at the National University of Singapore. Holst rose through the Office of the General Counsel during the mid 1960s when the Regents made several key decisions to dismiss professors based on the professors' political beliefs, decisions that were then overturned by the US Supreme Court. Throughout the 1990s and early 2000s, Holst also made key advice decisions with regard to the many contested issues of contracts. He retired before the report was finished on the compensation irregularities.

The current General Counsel is Charles Robinson, who receives around \$400,000 in total compensation. He is the key person giving legal advice to the UC President and Regents – for example, claiming that the proposed professional fee increases are legal and not, as a *SF Chronicle* article suggested, illegal.<sup>54</sup> The lack of independence of the General Counsel is a critical point enabling Regents to evade or justify a number of specific and general conflicts of interest.

### 2.10.2 Student Loans

The US student loan industry is worth an estimated \$85 billion.<sup>55</sup> Several key Regents work for, hold interests in, or sit on the boards of financial firms with substantial stakes in student loans. Regent Chairman Russel Gould is a senior vice president at Wells Fargo, one of the top providers of student loans. Regent Tang-Schilling was formerly a top executive at Golden West bank. Regent Blum has substantial holdings and business dealings with private, for-profit universities that derive large shares of their income from student loans (see below). Some UC Alumni Associations – which have representation

<sup>53</sup> Scully (1987: 936-7).

<sup>54</sup> (2009) UC Fee Raises Go Beyond Reason, *SF Chronicle*, Nov 18.

<sup>55</sup> Lazo, A. and M Glod (2009) White House Plan Would end Subsidies to Student Lenders, *Washington Post*, Feb27.

on the UC Board through the UC Alumni President and VP – have received payments from the student loan company Nelnet for directing members to the firm.<sup>56</sup>

These Regents stand to personally gain financially from the specific increases in loans by financial firms to student for fees raised by the Regents. The Regents also stand to personally gain financially from promoting a general climate in which fees are rising and students must take out more loans (it is common practice for UC Regents and administrators to promote an environment of fees spiraling upwards by justifying UC fee increases through comparisons with high and rising fee rates at other universities).

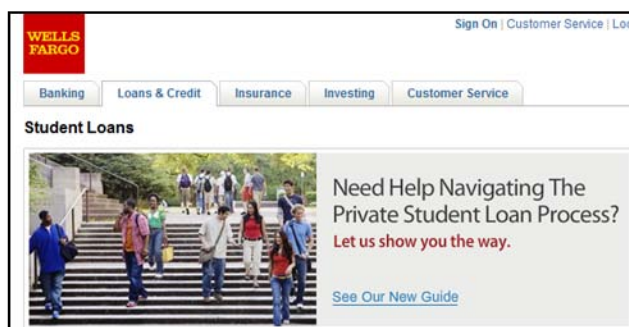
### 2.10.3 For-Profit Universities

An example of the sort of conflicts of interest facing the Regents is Richard Blum's investment in the for-profit education companies Career Education Corporation and ITT Educational Services. As he votes for and helps organize increasing student fees and restricted enrollments, he has also profited from the rising revenue at these for-profit universities.

Blum is reportedly the largest shareholder in Career Education Corporation, which operates 75 campuses and online colleges with 90,000 students.<sup>57</sup> CEC has been involved in numerous fraud investigations related to students and financial aid.<sup>58</sup> CEC provides bachelors, masters and doctoral degrees in various disciplines, and the largest source of its \$1.7 billion in revenue in 2008 was from University tuition. As Blum has invested in CEC, he has placed the investment co-chair at Blum Capital, Greg Jackson, on the CEC board of directors. The

firm Blum Strategic GP is registered in the tax-haven of Delaware and as such pays less taxes in California on its earnings.<sup>59</sup>

Figure 5: Online Student Loan Advertisement



*UC Board of Regents Chairman Russell Gould is a senior manager at Wells Fargo, one of the largest providers of student loans.*

Figure 6: For-Profit University in Los Angeles



*The LA campus of the for-profit American InterContinental University; UC Regent Blum is its largest shareholder.*

<sup>56</sup> Schevitz, T. (2007) Audit of UC Aid Offices Reveals Some Problems, *SF Chronicle*, May 17. UC also selected Citibank as the preferred private lender, even as it was under investigation for paying other schools for promoting the firm. A UC audit was done of UC financial aid offices in 2007, but found little improper except insufficient disclosure of ties with loan companies; Pender, K. (2007) Lender Payments to Schools Scrutinized, *SF Chronicle*, April 5; Schevitz, T. (2007) UC Toughens Student Loan-Program Controls, *SF Chronicle*, Oct 4.

<sup>57</sup> Strahler, S. (2008) 'Getting schooled: Career Education shares get boost after top investor lands boardroom seat, but stocks remain near bottom of class,' *Crain's Chicago Business*, Dec 8.

<sup>58</sup> E.g. Morgenson, G. (2005) The School That Skipped Ethics Class, *NY Times*, July 24; (2004) Justice Department is Investigating Career Education, *NY Times*, Sep 3.

<sup>59</sup> Blum actually holds at least three different firms: California-based Blum Capital Partners, LP; California-based Richard C. Blum & Associates, Inc.; and Delaware-based Blum Strategic GP II, LLC.

**Figure 7: Conflicts of Interest**

*The iconic TransAmerica building in San Francisco is home to URS, the international construction and military company at the center of a conflict of interest scandal between Regent Blum and the UC.*

Blum is also the third largest investor in ITT Educational Services, which is also based in Delaware to avoid taxes (it made \$342 million in profits (pre-tax) in the month of September 2009 alone).<sup>60</sup> ITT offers associates, bachelors, and masters degrees, and has 105 institutes and colleges online and in 38 states, with a total of 70,000 students. It has been involved in several cases of financial aid fraud.<sup>61</sup>

#### 2.10.4 Construction

Blum was appointed a Regent in 2002. As a Regent, he approved a \$48 million UC nanotechnology lab, but in 2005, Blum's Perini corporation purchased a construction firm working on the lab. Blum then sold his Perini stock at profit. There was outrage and student protest at a meeting in May 2005 over Blum's conflict of interest with another of his firms, URS, which had contracts with for

UC's Los Alamos National Lab. Nonetheless, in July 2005 a \$4.5 million contract was awarded to URS to write portions of the Long Range Development Plan for UC Berkeley. Several months later, he subsequently resigned from the URS board of directors and sold his \$220 million in stock. In April 2006, he made a gift of \$15 million to UC Berkeley for the "Blum Center for Developing Economies."<sup>62</sup>

#### 2.10.5 Investment

Before becoming a Regent in 2008, John Hotchkis was a financial advisor to the UC, but he did not acknowledge holding interest in a firm that the University chose to manage \$430 million in UC equity funds. In addition, "Hotchkis was also sitting on the advisory committee in 2005 when a firm headed by his daughter, Sarah Ketterer, was chosen to manage \$311 million in nonequity funds."<sup>63</sup>

In another example of the pervasive conflicts of interest, Regent Bruce Varner owns part of Viresco, an energy firm that has given money to UC Riverside for research on biofuels in exchange for the right to profit from new technologies UCR produces.<sup>64</sup>

#### 2.10.6 Research Funding

Concern has been raised about the influence on research, public goods, and academic freedom of several high-profile grants and donors, including agribusiness, oil and tobacco firms. The Regents and their appointees have been hostile to concerns about the influence of these interests.

There was great controversy over the \$25 million pact between agribusiness giant Novartis and the UC Berkeley College of Natural Resources. A peer review criticized the pact, finding that the process was unduly secretive, and that both the hopes and fears about the deal did not occur. However, they found

<sup>60</sup> Browning, L. (2009) Critics Call Delaware a Tax Haven, *NY Times*, May 30.

<sup>61</sup> ITT, Calif. Settle False Claims Lawsuit, *Inside Higher Education*, Oct 18.

<sup>62</sup> Hoffman, I. (2005) Students Lose War of Words Over Los Alamos, *Alameda Times-Star*, May 26; Byrne, P. (2007) Blum Rap, *MetroActive*, 28 Feb.

<sup>63</sup> Schevitz, T. (2008) UC Investment Adviser Appointed as Regent, *SF Chronicle*, March 12.

<sup>64</sup> Agha, M. and D Danelski (2007) Regent's Potential Conflict Surfaces, *The Press-Enterprise*, Jan 26.

also that it did affect the tenure review of a prominent faculty member, and negatively affected the College's reputation.<sup>65</sup>

Heavy tobacco funding of health research studies made headlines. The Regents eventually sided with the tobacco companies. However, after all the public outrage and negative publicity, the tobacco companies subsequently decided to withdraw funding.

In 2007 the largest corporate donation to a university in history was announced. BP would invest \$500 million in an Energy Biosciences Institute based at the UC, with a partnership at the University of Illinois also. A range of concerns were raised about this deal, including the secretive process, the private control of patents produced with public research, the skewing of research priorities, the damaging of UC Berkeley's reputation in order to greenwash BP, and the production of new technologies that would have negative social, economic and environmental impacts.

The pact also raised questions about the conflicts of interests of two scientists, Jay Keasling and Chris Somerville heavily involved in the project and also with private firms working on the same issues. Questions were also raised about the lack of adequate procedures on and monitoring of conflicts of interests. Just one of various examples was reported in *San Francisco Magazine*: "On at least two forms dated 2002, biologist Jay Keasling omitted a potential conflict, and the university's conflict committee never looked at the forms. Keasling's lab received more than \$1 million from UC BioSTAR, a program that raises grants from biotechnology companies and matches them with university and state money, yet the professor didn't disclose—as required by state law—that he served on the executive committee of UC BioSTAR. If he had, the names of the companies that invested in Keasling's lab through UC BioSTAR would be public record, but currently they aren't."<sup>66</sup>

## 2.11 Insufficient Compliance with Constitutional Requirements

There are potentially some significant provisions for public input on the process of selecting and confirming Regents. However, these provisions are not currently utilized appropriately and historically have rarely been used effectively. At the very least, those concerned with UC governance could work to ensure that the basic constitutional requirements are upheld.

### 2.11.1 Governor's Advisory Committee

The California Constitution requires that the Governor consult with an Advisory Committee (the members are listed in Figure 1) about nominees for Regents. However, the effectiveness and relevance of this advisory committee in practice is almost nil. Over recent years, the committee has not met, it receives very short notice of potential nominees, some committee members are not even aware of their duties or even that the committee exists, and any potential concerns of the committee can simply be ignored at the Governor's discretion. This is reportedly long-standing practice.<sup>67</sup> When contacted recently, Governor Schwarzenegger's office refused to make public the names of the people on the advisory committee.<sup>68</sup> Recent practice has been that the Regent begins to serve immediately after nomination, even before formally confirmed by the State Senate as required by the Constitution.

<sup>65</sup> Blumenstyk, G. (2004) Peer Reviewers Give Thumbs Down to Berkeley-Novartis Deal, *Chronicle of Higher Education*, July 30.

<sup>66</sup> Yogis, James (2007) Are We Backing the Right Fix for Global Warming? *SF Magazine*, December.

<sup>67</sup> Lapin, L (1992) Committee on Regents Never Met – Panel is Supposed to Advise Governor, *Daily News of Los Angeles*, July 26.

<sup>68</sup> Personal communication, Governor's office, October 2009.

### 2.11.2 Confirmation by the California State Senate

It is common practice for the Senate to first have nominees reviewed by their Rules Committee. Recent practice has been for the Rules Committee members to ask a few questions, some of which are given in advance so that the Regent may prepare and submit written answers. The Rules Committee hearings on the Regent nominee are often held many months after the Regent has begun to serve, and thus has a chance to prepare for the Rules Committee hearing. The hearings are rarely well publicized and rarely have any member of the public except for close friends, colleagues or family of the nominee. In practice, the State Senate then nearly always rubber-stamps the nominee without much discussion. A rare exception was in 1998 when the Senate refused to confirm Regent John Hotchkis, appointed by Governor Wilson. Hotchkis was reappointed by Governor Schwarzenegger and is now Chairman of the Board of Regents.

### 2.11.3 Representation of the Population of California

The California Constitution requires that “Regents shall be able persons broadly reflective of the economic, cultural, and social diversity of the State, including ethnic minorities and women.”<sup>69</sup> This measure was meant to redress the historically elite nature of Regents. Of the 157 appointed Regents from 1868 to 1997, roughly one third were lawyers, and one third were bankers, business executives or principals of mining and utility companies (see Figure below).<sup>70</sup> Only 14 were women, and only a handful were “working class.” This data helps illustrate that the Constitutional requirement that the Regents reflect the population of California has not been. A current illustration is Table 2 below, using 7 sample categories.

Table 2: Comparison of UC Regents and CA Population

	California	Regents
<b>ECONOMIC</b>		
Income	Hh income \$60,000	tbd
Wealth	\$12,400 Hh avg net worth	tbd
Profession	Varied	Real estate, finance, law, politics
<b>SOCIAL</b>		
Residence	tbd	tbd
Education	26% Bachelors degree or higher	tbd
Gender	50% female	30% female

<sup>69</sup> Section IX()

<sup>70</sup> Pusser and Ordorika (2001).



**CULTURAL**

Ethnicity

42% white

64% white

Sources<sup>71</sup>**Table 3: Professions of Appointed Regents, 1870-1998**

Profession	Number	Percent
Attorney	51	32%
Banker	20	13%
Business Executive	16	10%
Power and Mining Investor	14	9%
Civic Leaders and Philanthropist	13	8%
Real Estate Investor	10	6%
Medical Doctor	8	5%
Publisher	5	3%
Professor	4	3%
Transportation Investor	4	3%
Union Leader	3	2%
Minister	3	2%
Farmer	2	1%
Military	2	1%
Public Administration	2	1%

Source: Purser and Ordorika (2001), after California State Senate Rules Committee Archives.

#### 2.11.4 Prohibition on Political Allegiance as Selection Criteria

The constitution clearly states that “the university shall be entirely independent of all political and sectarian influence and kept free there from in the appointment of its Regents and in the administration of its affairs.” However, throughout the past decades, nearly all of the Governor’s nominations have been members of his same political party (see Table 3 below), although Governor Schwarzenegger has recently made a few exceptions. More often than not, as demonstrated above, nominees have been significant donors the Governor’s electoral campaign or close allies or associates. Table 3 *begins* to document some of these donations, but requires more research to be completed.

Moreover, when nominated Regents are not donors, they are often key allies. For example, Regent Russell Gould headed up Schwarzenegger’s election campaign, while Regent Charlene Zettel was part of his transition team. After Schwarzenegger appointed Zettel as head of Consumer Affairs, she supported lax regulations for many large corporations who had funded Schwarzenegger’s campaign.<sup>72</sup> And Regent George Kieffer, amongst other close ties to Schwarzenegger, was the personal lawyer for

<sup>71</sup> <http://quickfacts.census.gov/qfd/states/06000.html>; List of Regents 1999-2009

<sup>72</sup> Lazarus, David (2004) Governor Playing to Business, *SF Chronicle*, 6 Aug.

Schwarzenegger's wife. Another (former) Regent, Gerald Parsky, was Schwarzenegger's financial manager. And so on. Such practices go back decades, as the chart below illustrates for Governor Deukmejian.

**Table 4: Party Affiliation and Campaign Finance between Governor and Appointed Regent**

	<b>Party</b>	Personal & Affiliated Contributions to Governor	Contributions to Party / Candidates
<b>Gov Schwarzenegger</b>	Republican		
Russell Gould	Republican		
Hadi Makarechian	Republican	\$289,000	
Eddie Island			
George Kieffer	Democrat		
William de la Pena	Republican		
Bonnie Reiss	Democrat		
Frederick Ruiz	Republican		
Leslie Tang Schilling	Independent		
Bruce Varner	Republican		
Charlene Zettel	Republican		
John Hotchkis	Republican		\$470,000
<b>Gov Davis</b>	Democrat		
Richard Blum	Democrat	\$75,000	
Odessa Johnson	Democrat	\$500	
Sherry Lansing	Democrat	\$22,500	
Monica Lozano	Democrat		
George Marcus	Democrat	\$140,000	>\$1 million
Norman Pattiz	Democrat	\$210,000	
Judith Hopkinson	Democrat	\$50,000	
Haim Saban	Democrat	\$400,000	\$7 million
Delores Huerta	Democrat		
John Moores		\$270,000	
<b>Gov Wilson</b>	Republican		
Joanne Kozberg	Republican	\$4,500	
John Hotchkis	Republican		
Gerald Parsky	Republican	\$74,000	
Peter Preuss	Republican	\$32,500	
Ward Connerly	Republican	\$82,000	
John Davies	Republican	\$39,000	tbd

Source: various news articles, campaign finance records



Table 5: Gov Deukmejian's Relationships with Appointed Regents

<u>Regent</u>	<u>political service</u>	<u>political money</u>
Bagley	<b>A, B, C, E</b>	\$ 2,536
Brophy	<b>A, C</b>	\$10,600
Burgener	<b>A, B, C, D</b>	\$ 2,351
Campbell	-	-
Clark	-	\$73,233
del Junco	<b>A, D</b>	\$ 2,000
Gonzales	<b>E</b>	-
Johnson	-	\$23,500
Khachigian	<b>D (spouse)</b>	\$ 3,500
Kolligian	<b>C</b>	\$20,108
Leach	<b>A</b>	\$49,270
Nakashima	<b>A</b>	\$ 4,000
Watkins	<b>A</b>	\$32,500
Yeager	-	\$ 6,250

**A** has been a leader in Republican party organizations in California

**B** was an early colleague of Deukmejian in the Legislature

**C** was an important early supporter of Deukmejian's campaign for governor

**D** played a leading political role in Deukmejian's gubernatorial campaigns

**E** was appointed by Governor Deukmejian to head one or more state agencies

\$ total amount given to Governor Deukmejian's campaign funds, as a personal contribution or through one or more companies controlled by the individual.

Source: Schwartz (1991).

## 2.12 Threats to Shared Governance

In July 2009, the Regents took unprecedented steps that threaten long-established key principles of shared governance of the University system. Firstly, they held their meeting by teleconference, restricting public comment and participation. Secondly, they granted President Mark Yudof “emergency authority.” With such authority, the UC Office of the President overrode the Academic Senate’s explicit recommendations on its preferred faculty furlough option.

### 2.13 Abandonment of Public Education & CA Master Plan

Regents have been complicit in the gradual shift from a commitment to public funding for UC to increasing reliance on private funding. Regents have systematically neglected their responsibility to manage UC in accordance with the State's Master Plan for Higher Education. As a recent report from the state's Legislative Analyst's Office notes, the Regents have ignored many of the recommendations of the Master Plan and its reviews.<sup>73</sup>

Instead, the Regents, while maintaining rhetoric support of public education, have in fact moved to increasingly embrace measures founded upon market competition, fee for service, outsourcing, educational services, private industry agreements, and online education. The Regents have sought out and hired Chancellors and UC executive who share a commitment to this strategy but are able to frame it rhetorically as necessary for public education.

This transformation was formalized in the historic 2004 'Compact' on education, in which Governor Schwarzenegger made an unprecedented agreement with the UC Regents and CSU Trustees.<sup>74</sup> They agreed that the UC would "seek additional private resources and maximize other funds sources ... to support basic programs." In other words, the UC agreed to begin founding its basic, core operational budget on private funding. This was done, ostensibly, to forestall even greater cuts to the UC Budget (cuts, which, eventually came anyways). In 2008, with a budget crisis looming, the Regents hired Mark Yudoff – who argued "the first challenge for hybrid universities will be to increase tuition dramatically in order to remain viable and competitive with the eminent private research universities" – as UC President to further implement this strategy.<sup>75</sup>

The UC Regents and UC administration have misleadingly sought to shift the blame to the state legislature, and absolved the Governor of responsibility, even though he wields key control over the budget through his presentation of a draft budget and his line-item veto.<sup>76</sup> While the legislature does bare responsibility due to its failure to resolve budget and tax issues, both the Regents and the Governor have been complicit in their silence about the root causes of insufficient state revenues and financial support to higher education.

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<sup>73</sup> LAO (2009).

<sup>74</sup> Schwarzenegger et al. (2004).

<sup>75</sup> Yudof, Mark (2002) Higher Tuitions, *Change Magazine*, March-April.

<sup>76</sup> When asked in a New York Times interview whether he blamed Governor Schwarzenegger for budget shortfalls, UC President Yudof stated, "I do not."

### 3. Proposed New Structure

A new, more democratic, structure of the UC Board of Regents must be guided by sound principles, among which include flexibility, stability, proportional representation, checks and balances, broad choices, and equal access.

Based on these principles, a combination of mechanisms to select Regents seems best. These include Regents selected through California state district-based popular elections, elections by functional groups (staff, faculty, and students), adjusted appointment of Regents, and ex-officio Regents.

#### 3.1 Principles for Reform

Below are six key principles for reforms to achieve goals of greater transparency, responsibility, accountability and democracy. The six principles laid out below are flexibility, stability, proportional representation, checks and balances, broad choices, and equal access.

##### 3.1.1 Flexibility

Flexibility is required to ensure that if selected Regents are fail to fulfill their basic obligations and/or no longer represent the concerns of the population of California, they can be replaced by more able people.

##### 3.1.2 Stability

Stability is key because of the great complexity, size and strategic importance of the University system. Regents need time to learn detailed procedures of the Board and facts about the University.

##### 3.1.3 Proportional Representation

Proportional Representation is necessary to ensure that the various stakeholders in the University system have a voice. The University system serves many stakeholders.

##### 3.1.4 Checks and Balances

Checks and balances are necessary to ensure that in the event that a Regent or Regents do not fulfill their obligations, measures are in place such that such nonfulfillment does not significantly damage the functioning of the University system.

##### 3.1.5 Broad Choices

Ranked choice voting (aka, instant runoff) helps avoid a race to the middle in which two parties dominate the political system and offer similar proposals. A wider composition of input into the Board of Regents is more likely to better represent the concerns and priorities of the people of California. It will also bring a broader range of ideas, experiences and skills to the challenges of managing the University.

##### 3.1.6 Equal Access

Every effort should be made to ensure that selection of Regents is based upon the candidates' relevant qualifications, rather than only their economic wealth or political connections.

#### 3.2 Proposed Structure: The 5,2 Plan

Based on the principles outlined above, the proposed structure is a mix of appointed, ex-officio, and geographically and functionally elected Regents, with the total remaining 26. In this proposal, the Governor appoints 5 Regents, the legislature appoints 5, the public elects 5, and there are 5 ex-officio Regents. In addition, student, staff, and faculty each elect 2 Regents.

### 3.2.1 Appointments by Governor (5)

The governor's appointments would aim to ensure a balance of skills, backgrounds, insight and experience. In approving the governor's nominees, the Senate Rules committee would be required to evaluate candidates on these specific criteria. Appointees would face restrictions on whether they had contributed financially to or participated directly in the governor's electoral campaign. Appointees by the Governor would serve 6-year terms, after an initial 1-year shadow training term.

Given all the past problems with Governor appointments, why keep these, rather than simply abolish all Governor appointments? Improvements in appointments can be made with the restrictions and process just mentioned. Retaining Governor appointments is also a tactical, practical and principled choice – tactical in the sense of just reducing the Governor's appointments, and thus having a gradual, transformational – rather than totally new – change; practical in the sense that, under new restrictions and monitoring, the Governor should be able to appoint key people who bring complimentary skills and knowledgeable that are necessary but missing from existing Regents; and principled in the sense of emphasizing having multiple mechanisms for selecting Regents to check and balance on another (for example, the legislature's appointees could be political).

### 3.2.2 Ex-Officio (5)

There would be 5 ex officio members:

- 1) Chair of the University Academic Senate
- 2) President of the UCSA
- 3) Alumni President
- 4) Superintendent of Education
- 5) UC President

The terms of these ex-officio Regents would be as long as they hold their official position. This is usually one year for the Academic Senate, UCSA Chair, and Alumni President, while the Superintendant and UC President hold longer terms.

The main changes would be that the Governor and Lieutenant Governor would be removed as an ex-officio Regents. Over the past years, governors have rarely shown up to meetings, though in decades past this was not always the case. Governors in recent years have been too occupied with other duties to adequately manage the University. The rationale for removing the Lieutenant Governor as a Regent is that the Lieutenant Governor is elected to a relatively thin position, for which education is not a key part of the election campaign criteria. It was not clear why the Alumni Association Vice-President served in addition to the President. Alumni form an important group supporting the UC and having long-term interaction with the UC, but it's not clear why this warrants two ex-officio Regents (alumni could of course also run for an elected position).

### 3.2.3 Appointments by Legislature (5)

In this proposal, the Senate Education Committee selects 2 Regents to appoint based on a simple majority vote, and the Assembly Education Committee likewise selects 3. Appointees face restrictions on whether they have contributed financially to or participated directly in the legislative committee members' electoral campaigns. Subject to the other requirements defined in section 3.3 below, the Committees may use their own discretion to determine the process for nominating and approving Regents. Legislative appointees would serve 6-year terms, after an initial 1-year shadow training term.

### 3.2.4 Elected District Representatives (5)

5 Regents would be elected for 6-year terms by simple majority through a ranked choice non-partisan ballots held during state Fall elections.<sup>77</sup> Limited public financing would be provided in campaigning. Regents would be elected for a Regent District, each corresponding to approximately 8 geographically proximate state senate districts, and arranged to ensure rough contiguity, equal numbers of people in each Regent District, and balance of economic, political, and social characteristics.<sup>78</sup> A California state commission would decide which State Senate Districts correspond to which Regent Districts. Candidates would have to have had their permanent residence in their Regent District for at least 4 of the past 6 years.

Table 6: Example Regent Districts

<i>Regent District</i>	<i>Senate Districts</i>	<i>UC Campuses</i>
1	2,3,6, 8,11,15	UCSF, UCSC
2	1,4,5,7,9,10,13	UCB, LBNL UCD
3	12,14,16, 17,18,19	UCM, UCSB
4	31,32,33,34,35,37,38	UCR, UCI
5	20-30, 36, 39, 40	UCLA, UCSD

Figure 8: Example of Potential Regent Districts



<sup>77</sup> Currently, no Regents are directly elected to the position of UC Regent, although several UC Regents are elected by constituents, such as ex-officio ones (governor, Lt governor, speaker, president of the Alumni Association??).

<sup>78</sup> Alternatively, if CA assembly districts were used, 1 Regent District would be equivalent to roughly 16 Assembly Districts.

To ensure stability, institutional memory, all 5 Regents would not be elected at once, but rather on a rotating basis as follows: 2 Regents elected in the first year, 2 Regents 2 years later, 1 Regent 2 years later, and so on.

### **3.2.5 Elected Functional Representatives (6 total)**

Staff, faculty, and students would each elect from amongst themselves 2 Regents, as described in the sub-sections below. Members of the UC system who perform several roles would have to choose only one category in which they would exercise their vote. Voting could occur during normal student elections, and votes simply added across campuses.

#### **3.2.5.1 Staff (2)**

Staff would vote electronically for two non-partisan faculty Regent candidates during normal student elections. Details would be worked out to enable them to access voting by utilizing their employee ID number and a password. Staff Regents would serve 6-year terms, after an initial 1-year shadow training term. An alternative of having unions select Regents on behalf of staff is discussed below in sub-section 3.6.3.

While a group of staff representatives would likely want to spell out in further detail the requirements, this proposal suggests the following at least. In order to ensure that only qualified, dedicated candidates run, potential candidates would be required to have at least 2 years of public service, and to collect 500 signatures in support of their candidacy, and have a basic statement of interest approved by a simple majority of a UC campus committee of staff representatives.

#### **3.2.5.2 Faculty (2)**

Faculty would vote electronically for two faculty to serve as Regents during normal student elections. Both tenured and non-tenured faculty would be eligible to vote and stand for election. Faculty would also have 1 ex-officio Regent in the form of the Chair of the Academic Senate. Faculty Regents would serve 6-year terms.

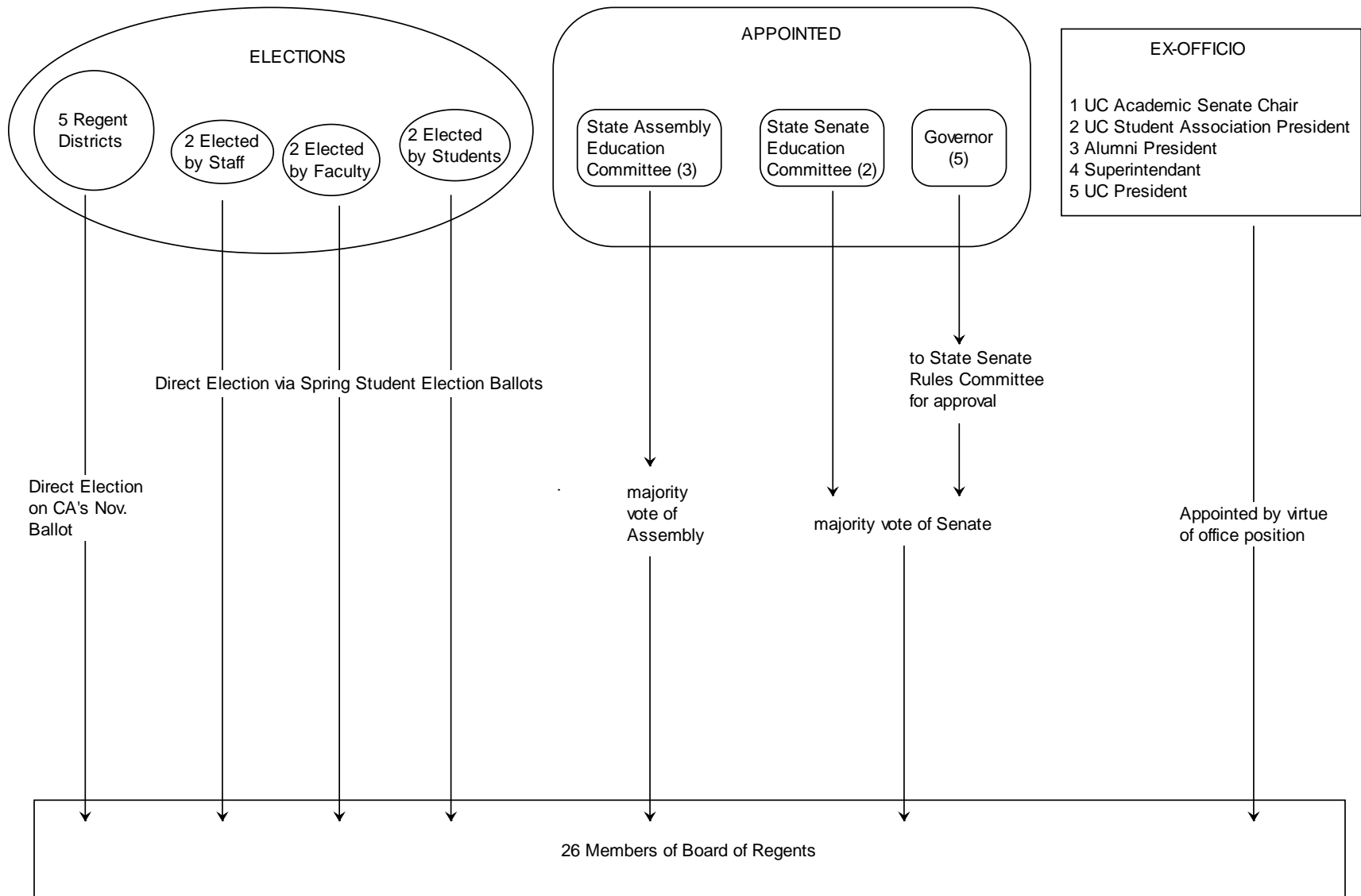
While the UC-wide Academic Senate would likely want to spell out in further detail the requirements, this proposal suggests the following at least. In order to ensure that only qualified, dedicated candidates run, potential candidates are required to have at least 2 years of service on a UC committee, to collect 500 signatures in support of their candidacy, and to have a basic 2-page statement of interest approved by a simple majority of the Divisional Council (or committee??) of their home campus Academic Senate.

#### **3.2.5.3 Students (2)**

One graduate Student and one undergraduate student would be elected through system-wide non-partisan electronic voting held in conjunction with normal student elections. While the UCSA would likely want to spell out in further detail the requirements, this proposal suggests the following at least. In order to ensure that only qualified, dedicated candidates run, potential candidates would be required to have at least 2 years experience in public service (one year of which must be education-related), and to collect 500 signatures in support of their candidacy, and have a basic statement of interest approved by a simple majority of the graduate or undergraduate External Affairs Committee.

Students will be elected for 2-years total, with the first year being a shadow training term, and the 2<sup>nd</sup> year being the full term. Students would also have 1 ex-officio Regent in the form of the President of the UCSA.

Figure 9: Proposed New Structure of the Board of Regents



An alternative option would be to have one Regent chosen by undergraduate students and one chosen by graduate students, without no requirement that candidates be students themselves. The relative advantages and drawbacks of this option merit further discussion.

### 3.3 Requirements to be a Regent

Because there have not been clear requirements to be a Regent, historically many people have been appointed Regents without having the requisite experience and knowledge needed to excel as a Regent. This situation can be remedied by laying out clear requirements that a Regent nominee should meet. Nominees must be 18 years or older by the date of nomination or election (whichever is earliest). Appointees by the governor and legislature, and candidates for district Regent elections, must have at least 3 years of significant experience dedicated to issues of education (at least one of which must be focused on Universities). Appointees must not have given greater than \$2300 directly or indirectly to the campaign of the nominating governor or legislature committee, nor greater than \$5,000 directly to political action committees or political parties in any of the previous 5 years. Another possibility would be to have Regents take an oath of office, to which they could be held.<sup>79</sup>

### 3.4 Electoral Processes

How can electoral processes promote democracy rather than entrench already powerful interests and people? Four issues are key: clean elections, preferential voting, recalls, and term limits. Clean elections involve limits on campaign contributions, and limited public financing for qualified candidates. Preferential voting allows voters to rank their top candidates and consequently fosters a broader range of candidates by allowing voters to vote for outliers without sacrificing their vote in a close race. And recalls ensure that if elected Regents do not fulfill their obligations once in office, they can be replaced by someone who will. Term limits prevent incumbents for wielding undue influence.

#### 3.4.1 Clean Elections & Publically Financed Campaigns

Essentially, although financial campaign contributions can be limited, expenditure cannot, leaving the risk of a wealthy person having an advantage. This situation can be remedied somewhat with public financing to candidates, as well as other measures, and should not be seen as precluding the possibility of democratizing the BoR. Additionally, the age of internet fundraising has proven that is sometimes possible for non-wealth candidates to compete even against rich, entrenched interests (for example, with Obama). Whether Regent elections could gain such numerous, small donations, however, is not clear.

Analysts have long struggled over how to balance money and politics, to prevent corruption on the one hand, but to not restrict citizens' ability to support the campaign of the candidate they prefer on the other hand. Courts have upheld limits on individual and group campaign contribution; however, limits on candidates total expenditures on campaigns have generally been seen as infringing on Constitutional rights to free speech.

Several concerns are behind efforts to ensure that money does not corrupt the electoral process. One concern is about direct financial contributions being linked to some favor. Another concern is that candidates' donors will shape their general orientation or unwillingness to take on some measures. There are also other important general concerns about narrowing of the candidate field to those with

<sup>79</sup> Perhaps something along the lines of: "I do solemnly swear to protect, defend, and advance the cause of public education at the University of California, to ensure that this University system works and educates for the common good, to never abuse or misuse my position of power for personal gain, and to be accessible, available, and accountable to my constituents."



wealth or those able to fundraise, about emphasizing wealth or fundraising skills rather than skills and ideas needed to excel in the position, and about the time spent in office working on fundraising.

An important question to resolve is whether elected Regents would or should be seen as public offices subject to existing electoral laws, or whether the UC's legal status means that candidates for Regent positions could be subject to specific electoral laws. If Regents are not subject to normal election law, campaigning might even be limited to an internet site, or a small description and list of endorsements in the voter's guide.

In California, voters will decide in 2010 whether to approve the California Fair Elections Act, passed by the state government in 2008. A ballot proposition for clean elections was put to California voters in 2006.<sup>80</sup> It proposed public financing of political campaigns and contribution limits on corporations, but was defeated.

Clean elections are law in seven states and two cities.<sup>81</sup> Voluntary public financing is also available during US Presidential elections (primaries and the general election).<sup>82</sup> Voluntary campaign funding might variously be seen by voters, or portrayed to them, as a badge of prestige, as a minor issue, or as wasting the state's money. A further key question is what limits on public financing can be set, and how.

Clean elections were dealt a major – but not insurmountable – blow in 2007 when the Supreme Court ruled 5-4 that certain groups could fund “issue” ads in the final days of an election, even if the issue ads strongly favored certain candidates.<sup>83</sup> Nonetheless, clean elections that work to minimize the influence of money in politics are an important – but neither totally necessary nor sufficient – component of a more democratic BoR. Beside regulations on financing, other aspects of elections are important, including candidate requirements (see above), as well as preferential voting and recalls (see below). Moreover, some of conventional advantages conferred by having large amounts of campaign funding may be declining in our age when newspaper and TV coverage are declining and internet usage rising.

#### ***3.4.1.1 Matching Funds***

A candidate must qualify for public funding. Qualification can take various forms, but usually means collecting signatures or small donations from people in their district. If a qualified candidate is outspent by a privately funded opponent, they receive matching funds, up to a certain limit. Matching funding may be able to stand up stronger to the conservative Supreme Court. However, this is in dispute by some lower courts, which read into a 2008 Supreme Court decision (though the court has not addressed the issue explicitly).<sup>84</sup>

<sup>80</sup> Proposition 89, sponsored by the California Nurses Union.

<sup>81</sup> Arizona; Connecticut; Maine; New Jersey; New Mexico; North Carolina; Vermont; Albuquerque, New Mexico; and Portland, Oregon.

<sup>82</sup> The details of the US presidential systems require candidates to raise at least \$5000 in 20 states in \$250 max contributions.

<sup>83</sup> *FEC v. Wisconsin Right to Life*, June 25 2007; Congress had passed the Bipartisan Campaign Reform Act (BCRA).

<sup>84</sup> *Davis v. Federal Election Commission*. The decision concerns special fund-raising privileges given to candidates that were outspent. It ruled such special privileges violate the 1<sup>st</sup> Amendment.

### 3.4.2 Instant Runoff Voting / Preferential Voting

Instant runoff voting allows voters to support their favorite candidate without worrying whether their votes will thereby not go to one of the leading candidates in a close race.<sup>85</sup> Instant runoff voting allows voters to vote for their most preferred candidate without totally risking the possibility that their most disliked candidate will win over another of their most preferred candidates.

Voters are asked to rank their top 3 candidates in order of preference. If no candidate gains a majority, then the candidate with the least #1 rankings is eliminated and the ballots going to that candidate are redistributed to the other candidates according to the ballots' rankings (that is, the candidate rankings of each the ballots that voters had cast for the eliminated candidate). The process is repeated until a candidate has a majority. Instant runoff voting is used by various national governments, cities in the US (for example, San Francisco), as well as for political parties in the UK, Canada and elsewhere.

Preferential voting also arguably means more of a focus on substantive issues and less negative, oppositional campaigning because candidates do not want to alienate supporters of other candidates because such supporters could then be in play if the supporters originally preferred candidate is ruled out.

Figure 10: Example of Ballot in Preferential Voting

**Rank any number of options in your order of preference.**

<input type="checkbox"/>	Joe Smith
<b>1</b>	John Citizen
<b>3</b>	Jane Doe
<input type="checkbox"/>	Fred Rubble
<b>2</b>	Mary Hill

### 3.4.3 Recalls

If representatives are not fulfilling their obligations and responsibilities or no longer represent well the priorities and needs of the population of California, they may be recalled. This would apply only to elected Regents serving 6-year terms. Other Regents serving shorter terms (such as student Regents) or serving ex-officio would not be subject to recalls.

Recalls of elected representatives would be done by the same body of constituents that elected the representatives. Putting a recall measure on the ballot would require (1) signatures of corresponding constituents totaling 10% of number of winning votes of the person to be recalled (signatures collected voluntarily without payment); and (2) the recommendation of a simple majority of an ethics taskforce of the Board of Regents.

### 3.4.4 Term Length and Limits

Regents would be eligible to serve a maximum of two terms. If a Regent is appointed or elected to serve the remainder of a term vacated by another Regent, then that term would count as one of the maximum two terms only if less than one third of the term remained.

Further discussion should address the relative benefits and disadvantages of 2 6-year terms versus other arrangements, such as 3 4-year terms.

There is also a need for a discussion of the most appropriate term lengths for appointed and some elected Regents. This present report's 5,2 proposal outlined here has suggested 6 years, but some people argue that 6 years is too long, while others contend it is too short. 6 year terms can help meet need for institutional continuity, and still enable some degree of accountability if coupled with the

<sup>85</sup> A prominent example is the claim that Nader was a spoiler in the 2000 elections between Bush and Gore by capturing votes in Florida that otherwise might have gone to Gore.

possibility of recall of Regents not performing their duties or reflecting the priorities of the people of California.

### 3.5 Other Elected University Boards

The possibility of meaningful reform is illustrated by the fact that four other major state university systems have public elections for all or most of their members of their university Board of Regents.<sup>86</sup> These are Colorado, Nebraska, Nevada, and Michigan – the latter of which is routinely cited as a peer of UC campuses. No university system is perfect of course, and these Board structures invariably have their own problems. By closely considering the history and debates about Regent governance and election at these university systems, we can gain important insights about what may be the most appropriate system for California, recognizing of course that California is unique and will require a Board tailored specifically for its conditions and goals. More research on these topics is needed, and only cursory sketches are given in the following sub-sections.

#### 3.5.1 Colorado

The public elects all 9 of the Board of Regents of the University of Colorado system. Regents serve staggered terms and are elected via geographical districts. The elected Board of Regents was established by Colorado's constitution in 1876. Before 1973, regents were elected in state-wide elections. Partly due to the progressive politics infused through democratically elected Regents, the University of Colorado was the first public university in the state to extend benefits to same-sex partners of university employees (In contrast, CA Governor Wilson reportedly appointed a Republican ally as a Regent in 1999 in order to block such a measure in the UC system).

#### 3.5.2 Michigan

In the University of Michigan system, 8 of 9 Members of the Board of Regents are elected by the public. The same is true for the Board of Trustees of Michigan State University. This policy was laid down in 1850 in the state constitution. Initially, regents were simultaneously selected from each of eight districts. In 1863 terms were staggered. In 1908, the Superintendent of Public Instruction was added as an ex officio member, reversed in 1963.

#### 3.5.3 Nebraska

The public elects 8 of the 12 members of the Board of Regents of the University of Nebraska system. The Constitutional Conventions of 1871 and 1875 proposed electing the Regents. Regents are elected on a nonpartisan ballot from districts for 6-year terms. Three students also serve as non-voting members. Governor Kerrey proposed in 1985 to switch to appointed Regents, but was unsuccessful. In July 2006, Regent David Hergot was removed from office by the Nebraska Supreme Court for violating state campaign finance laws, accused of failing to disclose campaign activities that would trigger public funds to go to his opponent.

#### 3.5.4 Nevada

All 11 of Nevada's Board of Regents are elected by the public. A ballot initiative to change the system was put to voters in 2006 but failed. In 2007, a reform bill was proposed to shift to Gubernatorial appointments of Regents.

<sup>86</sup> See Education Commission (1997); Hebel (2004).

### 3.5.5 Pennsylvania

One of the 39 members of the Board of Trustees of the Lincoln University system is elected by the public.

### 3.5.6 Illinois

Illinois used to have trustees elected by the public. It switched to gubernatorial appointments. The result, some argue, was that the governor appointed close associates.

## 3.6 Alternative Options

The proposed BoR structure laid out above is only a proposal. It will hopefully stimulate serious analysis and discussion on different variations and different possible alternative forms of governance of the BoR, and their relative advantages and disadvantages. As discussed in the ‘Principles for Reform’ section above, the strongest BoR may arise out of combining several different mechanisms of selection, so it should be born in mind that various options are often – though not always – compatible and complementary to one another.

The sections below discuss some of these alternative options, including:

- varying the proportions of Regents selected by different groups
- selection of Regents by each UC Campus
- several union-nominated Regents
- selection of Regents mostly by the legislature
- nomination by unions
- shifting UC jurisdiction under the state legislature

After discussing these options, the report considers potential concerns and risk mitigation measures, before then going on in Chapter 4 to discuss avenues of reform for actually formally institutionalizing the proposed new structure of the BoR.

### 3.6.1 Varied Proportions

The following table summarizes other potential variations in the composition of the Board of Regents. Some of these differences are discussed in the following sub-sections. The tradeoffs of the different options should be a subject of discussion and debate. A broad poll could also be conducted to see more precisely which proportions people prefer.

**Table 7: Potential Variations in the Composition of Regent Representatives**

	<b>5,2</b>	<b>CRU</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<i>Public</i>	5	9	10	10	5	5		
<i>Students</i>	2		2	3	2	3		8
<i>Staff</i>	2		3	3	3	3		8
<i>Faculty</i>	2		2	3	2	3		8
<i>Ex Officio</i>	5	8	9	7	9	7		
<i>Governor</i>	5				5	5		
<i>Legislature</i>	5							
<i>UC Campus</i>								
<i>Campuses &amp; Communities</i>		10					20	
	26	27	26	26	26	26	20	24

### 3.6.2 Regents by University Campus

Option E above illustrates a proposal to have 2 Regents from each of UC's 10 campuses. However, this system could arguably lead to competition amongst campus-based Regents to bring home pork projects, rather than a commitment to system-wide excellence and synergy. In such a proposal, it would be difficult to ensure that there are always student, faculty, and staff representatives on the Board. Perhaps the greatest objection to such a proposal would be that the UC is financed by state taxes, and thus the citizens that are taxed should have some say in the selection of the Board, rather than just immediate stakeholders within the UC system.

The option put forward in 1993 by the Committee for a Responsible University proposes having a Regent selected at each UC campus through Campus Councils (in addition to ex-officio and publically elected Regents). These Councils, under CRU's proposal, would be composed of the chancellor 5 representatives elected each by campus faculty, staff, students, and county citizens (see Appendix for more details). The last is a particularly unique and interesting feature, since the UC Campuses often have very important relations (also often conflicted relations) with their local communities.

### 3.6.3 Several Union-Nominated Regents

A Regent or several Regents would be selected through University-wide nomination by unions. While certainly some staff representation on the Board of Regents seems necessary, not all staff are members of unions, nor represented by unions.<sup>87</sup> Restricting Regental representation to a union member or a person representing unions seems less open than having Regents who represent staff in general, and the final Regent may well be a member and office-holder of a union.

On the other hand, organizing elections among all staff may be logistically challenging. Would it be worth the possibility of perhaps a smoother Regental selection process to piggyback on unions' existing organizational structures?

### 3.6.4 Legislative Selection

The state legislature would select Regents. Legislatures select Regents at some other states' post-secondary education institutions. This option – which forms part of the 5,2 proposal above – draws on

<sup>87</sup> Some unions, like the UAW for graduate student instructors, represent students that are non-members.

indirect democracy through the elected assembly members' choices of Regents. A possibility within this option would be to have slots for Regents from amongst students, faculty and staff.

It would have to be decided which group within the legislature would select such Regents, through which processes, and on which criteria. The education committees of the Senate and/or House would seem to be appropriate groups. Prospective Regents could apply for the position. The risk is that such prospective Regents may donate financially to members of the Education Committees, though limits on such contributions could be set. Another consideration is whether to have selections from the Committees (or some sort of joint group or advisory committee) be ratified by the Senate and/or the House (by a majority seems most reasonable, rather than two-thirds).

### 3.6.5 UCSA Selected Student Regent

An alternative for the ex-officio UCSA President Regent would be to have the UCSA select a student Regent. This may be a reasonable switch if discussions with UCSA, UCSA Presidents, and others show that the requirements of being a UC Regent are too onerous for the UCSA President, given the President's other duties and time commitments.

A key change that should be considered is to alter the existing process for selecting a student Regent (see Figure 1). Currently, candidates apply to UCSA, which then reviews applications and forwards three nominees from which the UC Board of Regents chooses. BoR selection from amongst three nominees potentially leads to a more insular Board, and could be replaced by direct appointment by UCSA after a democratic selection process.

### 3.6.6 UC under the State Legislature

In May 2009, legislation was introduced as SCA 21 and ACA 24 to formally expand legislative control over the UC beyond the fiduciary/budget control it now holds.<sup>88</sup> This change would establish authority similar to that exercised over the CSU. These bills began to touch on some issues related to a more democratic Board of Regents, and hence its worth considering in more detail how they were received.

The bills received the support of UPTE, AFSCME, the California Labor Federation, and thousands of letters and emails. President Pro Tem Darrell Steinberg blocked these measures by holding SCA 21 in the Rules committee after having previously moved it to the Education Committee, though he stated that he is "committed to allowing any ideas to be heard at some point."<sup>89</sup> UC President Mark Yudof outlined opposition based on the claims that existing legislative oversight is sufficient, that "the University remains committed to public accountability and transparency in all that we do," that the legislation would raise costs by lower UC's bond rating and reduce private donations, and that such control would threaten academic freedom (a copy of Yudoff's letter is in the Appendices, sub-section 7.4.11.1). A statement from the UC made similar claims (see sub-section 7.4.11.2), as well as the retrograde head-in-the-sand assertion that the UC "has thrived under the system of autonomous governance, led by the Regents, that was so wisely written into the Constitution by our pioneers." The California Alumni Association launched a campaign "Hands Off UC" to defeat the bills by encouraging emails to state legislators. The Council of UC Faculty Associations expressed their support for "regental autonomy" in a letter, arguing also "We are concerned however that the current debate over regental autonomy is distracting both the legislature and the UC administration from the policy debate that the state should be having over the values of quality, access, and affordability articulated in the Master Plan and the

<sup>88</sup> The bills were authored by Leland Yee, Roy Ashburn and Gloria Romero in the Senate, and Brian Nestande and Anthony Portantino in the House.

<sup>89</sup> Sweeney, J.P. (2009) Bills Giving Legislature Control of UC Shelved, *Sign On San Diego*, July 10.

future of UC as a public institution.” The UC Academic Assembly also passed a resolution stating naively “That the existing provisions of Article IX, Section 9 of the Constitution of the State of California provide for sufficient oversight by the legislature and elected officials of the University; and ...that preservation of Regental autonomy is essential to ensuring that the University is ‘independent of all political or sectarian influence,’ which is critical to maintenance of the University’s excellence in teaching, research, and service”

### 3.7 Concerns & Risk Mitigation

Several concerns and risks are frequently mentioned in response to the idea of a more democratic Board of Regents, including wealthy or interest-group capture, political party control, ignorant voters, experience elsewhere, and institutional memory. This section discusses some of these concerns and which steps in the proposal laid out above address these concerns and risks.

#### 3.7.1 Wealthy or Interest Group Capture

One of the most immediate questions that arises when discussing the idea of a more democratic UC Board of Regents is how to prevent seats from simply being purchased by wealthy candidates able to finance large election campaigns. This concern has been addressed in a number of the points above. Firstly, there would be requirements that the candidate would have to have some experience in public service and higher education, campaign contributions would be limited, and publically financed elections would be used. However, people should still investigate the possibility of restricting Regent election financing to public funds, which may depend on whether Regents are considered normal state public officials or not. Another key question is the fiscal impact on the state of publically financed elections, and which criteria should be used in order to qualify for public financing, and how the level and maximum of such financing would be determined. Internet coverage plus a minimal supplement should be sufficient for student, faculty and workers

#### 3.7.2 Threats to Academic Freedom

Others have raised the question of whether a more democratic Board of Regents would threaten academic freedom by having curricula and research agendas set by political ideologies. Would a Republican dominated Board mean more hiring more administrators and faculty with predilections towards free market economics, and a Democrat controlled Board entail more courses on labor unions? This concern is totally unwarranted. To be clear, a more democratic Board of Regents would be even more open and accountable on preserving academic freedom and the division of labor between Regents’ focus on administration and faculty focus on education and research. What is being changed is not the basic role of the Regents, but rather the process of selecting Regents.

#### 3.7.3 Threats to Educational Integrity

Another pertinent question is what if someone with an anti-education, anti-evolution, or anti-intellectual approach is elected? As described above, the 5,2 proposal is a hybrid one with Regents selected through a number of different ways, and is thus fortified with checks and balances. Extremist anti-education or anti-science candidates would likely only be able to capture 1 or 2 at most out of 26 regents, and thus would have a negligible impact. Also, if it was shown that they had not fulfilled their obligations, they could be recalled.

#### 3.7.4 Political Party Control

In order to prevent political party control of the selection of Regents, candidates would be prohibited from advertizing affiliations with political parties. Also preferential voting, would allow voters to rank their top 3 candidates. This ranked choice voting would ensure that people would be able to vote for



their most preferred candidate without the risk that a vote for a little known candidate would preclude them from also supporting a more well-known candidate as a backup.

### 3.7.5 Ignorant Voters

What about the risk that voters simply will not be informed or bother to be informed in making their choices for UC Regents? This is inevitably part of many elections. It is worth noting that this phenomena occurs – arguably even to a greater extent – with the current Governor-appointee dominated system. The aim of the hybrid 5,2 proposal is that there a diversity of selection processes, which helps minimize the risk that the Board would be dominated by Regents selected by uninformed or unconcerned voters. It is also worth noting that voters are much more educated now than when the UC BoR system was designed.

### 3.7.6 Comparisons

Some people have expressed the concern that the existing Board of Regents structure has enabled UC's success as a top-level university system, and such success would be reduced with a more democratic board of Regents. In reality, California's economy has generated enormous wealth and resources, and these – together with the Master Plan – have enabled a top quality university system **DESPITE** UC's undemocratic governing structure and the heavy political influence in practice in selecting Regents. UC's governing structure has now become an unavoidably antiquated hindrance. If the UC achieves a democratic governing board, it will become an even greater University system by keeping with historical trends towards greater openness, democracy and transparency needed to meet the challenges of the 21<sup>st</sup> Century.<sup>90</sup>

### 3.7.7 Institutional Memory & Experience

Multiple mechanisms will ensure that new and incumbent Regents have the adequate experience, skills, and knowledge needed to perform their duties.

Running the UC system is a large task, and as a consequence, currently Regents depend heavily on staff and the UCOP for essential support. Such support would continue under the proposed 5,2 hybrid structure. Elected Regents would also gain experience and insight through a shadow system in which Regent-designates attend and observe meetings but are not able to discuss or vote.

A clear response can be given to those critics who would say that the UC needs a Board filled with investment bankers because the UC handles many complicated decisions with its large and complex budget and investments. Firstly, bankers are a minority on the current Board. Secondly, a whole host of support staff will be there to help. Thirdly, current finance-related Regents handle issues in inappropriate ways. Fourthly, a new curious mind can rethink taken-for-granted assumptions, and can help make issues and decisions more transparent by engaging the public in the course of his/her own learning process.

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<sup>90</sup> The other universities and university systems with publically elected Boards of Regents are generally ranked lower than the UC **DESPITE**, rather than because of, their elected governing body.



## 4. Reform Process

This section discusses three key next steps necessary to achieving a more democratic structure of the Board of Regents. Firstly, a wide group of people needs to deliberate to figure out the most appropriate structure to be pushed through the political-legal process. Secondly, reforming the Board of Regents requires one of three options for amending the state Constitution: a ballot initiative, a measure in the state constitutional convention, and a referendum from the legislature. The relative feasibility and tradeoffs of each of these avenues needs to be investigated and discussed.

### 4.1 Deliberation

Broad public deliberation will be necessary to build up an appropriate set of measures to reform the structure of the UC Board of Regents. This report is an effort to initiate a conversation that will lead to a broad coalition that can usher through needed reforms.

Deliberation can take various forms. The following is by no means an exhaustive list, but possible forms of deliberation might include the following. Meetings can involve various groups, campus meetings, community meetings, hearings in the California legislature, academic courses, and workshops, among others. Other Discussions can happen by telephone and with family, friends, faculty, students, staff, and visitors. Online media can include email listservs, blogs, e-conferences, and others. Other written work might include position papers, op-eds, drafts of legislation, and articles in newspapers, magazines and/or journals.

### 4.2 Legal Avenues

There are three main legal avenues through which the California state constitution has been changed – hundreds of times! – since it was originally written in 1849. These avenues are a referendum, a ballot initiative, and a constitutional convention, and each is discussed below. A ballot initiative requires a great deal funding and volunteering to require signatures; a referendum might encounter intransigence of the state legislature and the governor. A constitutional convention may offer some possibility, but could be tightly controlled by the political heavyweights that are organizing it.

A ballot initiative seems to be the most feasible option for reforming the Board of Regents. Many valuable lessons on organizing and politics can be gleaned from the many experiences with legislation on the UC (some of which are in Appendix 8.6). The University of California Student Association has been a key organizer and supporter of many legislative efforts. The UC Berkeley student government passed a resolution supporting a more democratic Board of Regents, and such efforts must be scaled up so that the UCSA must express public support for reforming the Board of Regents. Work is therefore required to gain the support of the student governments at the 10 UC campuses in order to bring the UCSA fully on board. The UCSA has an annual priority-setting conference in the summer of each year where issues of BoR reform should also be discussed. Because the California State Universities have a similarly undemocratic Board of Trustees – and many similar accompanying problems – there is potentially room for gaining strength and numbers needed for reform through an alliance between the CSUs and UCs.

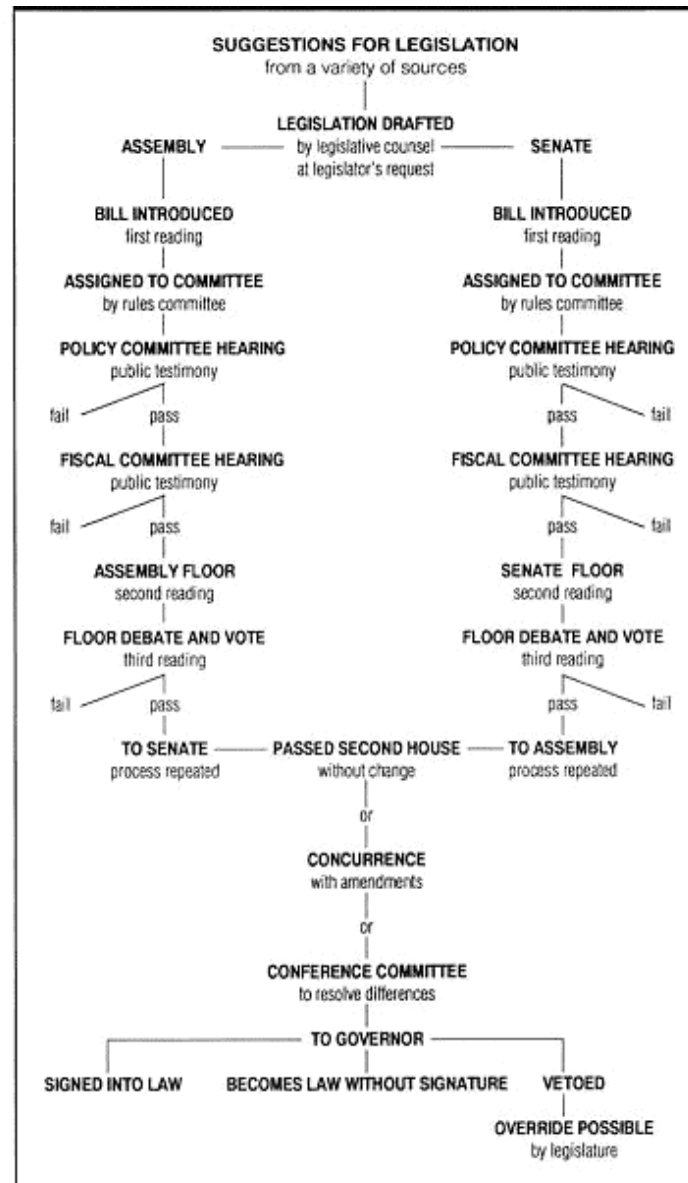
#### 4.2.1 Referendum by the California State Legislature

The California state legislature may start the process of amending the California Constitution by passing an act by two-thirds in both houses, which then is put on the general election ballot, where it requires

50% +1 to pass. This avenue is a real possibility, despite the state legislature's full agenda and is disagreements. UC and state budget and political conditions may also shift, particularly as students, faculty and staff become more organized. There may be windows of opportunity. Key current and recent legislators with whom support, insight, and contacts might be shared include Gloria Romero, Portantino, Alberto Torrico, Beall, Block, Bonnie Lowenthal, Leland Yee, Jeff Denham, Nestande, Mark de Saulnier. and others to be determined.

The legislative process is as follows:

Figure 11: Typical Path of Legislation



### 4.2.2 Ballot Initiative

The California Constitution can be changed through ballot measures, and California has an extensive, controversial history around so-called ‘direct democracy’ through such ballot measures (most recently with proposition 8 on same-sex marriage, and importantly with Proposition 13 in 1978).<sup>91</sup>

Ballot measures to amend the state constitution require gathering 8% of the total votes cast in the previous gubernatorial election, which today equates to collecting almost 700,000 signatures. However, the number would most likely need to be more than 1 million, due to illegible and disqualified signatories. The initiative process is arguably susceptible to the heavy influence of money, as signature gatherers can be paid, and paid advertising can swing voters. However, there is also room for great contributions from volunteers, and for people to make up their own minds on initiatives. The offices of the California Attorney General and the Secretary of State are key agencies coordinating the ballot process. To be put on the following year’s November ballot, initiative text must be submitted by September (see timeline). It is not clear whether an initiative to reform the Regents would have more possibility of success in a November or June election, or a regular or off-year election.

There is valuable experience with previous education-related ballot initiatives, particularly the Tuition Relief Now Act. This proposed ballot initiative was supported and facilitated by the UCSA and the Greenlining Institute, and gathered hundreds of thousands of signatures, but was unable to qualify for the election.

**Table 8: Ballot Timeline (for November Ballot)**

Late September	Submit proposed measure to Attorney General and request title and summary
Mid November	Attorney General prepares and issues title and summary; collection of petition signatures can begin
Mid April	End of signature collecting
Late June	Secretary of State determines if ballot measure qualifies to go to the general election

Source: California Secretary of State<sup>92</sup>

### 4.2.3 California Constitutional Convention

Californians have held two conventions to write and then rewrite the state constitution (in 1849 and 1878), but many attempts have been made to hold a convention (in 1897, 1914, 1919, 1930, 1934, and 1947).<sup>93</sup> Participating in such a convention might be one avenue through which changes in the structure of the BoR might be achieved. Key issues that come up in such conventions are who are the delegates, how are they chosen, what is the scope of the convention, and what process do they go through in writing the new draft constitution.

<sup>91</sup> Self (2005); Baldassare and Katz (2007).

<sup>92</sup> <http://www.sos.ca.gov/elections/suggested-initiative-deadlines/2010-suggested-initiative-deadlines.pdf>

<sup>93</sup> In numerous other states, every 10-20 years voters are automatically asked if they want to authorize a state constitutional convention. [www.repaircalifornia.org/Docs/Meeting/QandA\\_May2009.pdf](http://www.repaircalifornia.org/Docs/Meeting/QandA_May2009.pdf)

Currently, calling a constitution convention requires a 2/3 vote by the legislature in order for the call for a convention to be put on the general ballot. If a majority of citizens then vote for the convention, it would be held within 6 months, and then the draft constitution would be put on the ballot to be passed by a simple majority in a general election.

A range of organizations have been working on calling a constitutional convention in the next few years. These efforts have been largely spearheaded by the business group the Bay Area Council, however a range of other groups representing very different perspectives and constituencies, such as Common Cause, have also joined in the effort. More information can be found online, for example through [www.repaircalifornia.com](http://www.repaircalifornia.com). A key figure pushing the convention process has explicitly cited “our rapidly disintegrating public higher-education system” as a reason to hold the convention.<sup>94</sup>

Because these groups view the legislature as intransigent, they are trying another move in order to bypass legislative control over the call for a convention. They are attempting to pass a ballot measure that would amend the California constitution such that a call for a convention could be issued through a general election, rather than exclusively initiated by the Legislature. Both ballot measure texts have been formally approved and now supporters must collect nearly 700,000 signatures by early 2010 in order for the measure to be put on the ballot for the general election later in 2010.

### 4.3 Advocacy and Pressure

While the three legal avenues laid out above are the key formal channels by which the structure of the BoR can be changed, these procedures would most likely only occur with significant concurrent support, pressure and advocacy. These would hopefully include not only the standard set of tactics – such as letter writing, lobby visits, post-card campaigns, strikes and rallies, advertisements, etc – but also new and creative activities.

One option that has been mentioned is to proceed with elections for Regents by functional groups (staff, students, and faculty) and use lobbying and, if ultimately necessary, civil disobedience measures to demand that these elected Regents be seated (see full proposal in Appendix 7.2.2).

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<sup>94</sup> Wunderman, J. 2009 Call the Constitutional Convention, *SF Chronicle*, Nov 14.

Table 9: Comparison of Legal Avenues

	<i>Cost</i>	<i>Schedule</i>	<i>Time Commitment</i>	<i>Likelihood of Success</i>
<b>Legislative Referendum</b>	Medium – cost of lobbying (which can be offset somewhat by faculty, student and staff efforts, including through existing organizations such as UCSA, CUE, etc); cost of advertising for final election	Short basic time frame; long preparation	Long & intense for consistent lobbying	Medium - Opposition from assembly members possible, and possibly from the Governor (depending who wins in 2010)
<b>Ballot Initiative</b>	Medium-high - cost of collecting signatures (though volunteering can help); cost of advertising	See Timeline Table above	Key phases are collecting the signatures, and then advertising before the election	Medium-High – depending on advertising campaign
<b>Constitutional Convention</b>	Low – Piggy-backing on Convention Process	Depends on whether there are challenges to the ballot initiatives; if approved, convention is held within 6 months, and then presented at next general election	Low intensity during the process of calling the convention, then furious during the actual convention	Medium – depending on groundwork & preparation and structure of convention

## 5. Conclusion

This report has presented a detailed, constructive proposals for moving forward in reforming the UC. The report presents a history of, and rationales, proposals, and avenues for making the UC Board of Regents more democratic, more representative, and more accountable.

As this report was being drafted in the Fall of 2009, the UC system was in news media across the state, country and world due to the dramatic measures taken on layoffs, furloughs, and student fee hikes, and the protests registered by staff, students, faculty, and other supporters. Yet these concerns more often than not are not resolved. Because protesting groups do not have any legal or political recourse for actions taken by the Regents, other tactics, such as building occupations, sometimes come to appear as the only substantive avenue of influence. Discussion of the need to democratize the Regents has been part of protest organizing over the past few years on a number of related issues.

Other proposals from UC President Yudof that students don 'We're UC and We Vote' buttons or call aloof legislators in Sacramento are naïve and do not address the structural problems of UC governance identified above. Yet, university administrators are determined to neither permit occupations nor negotiate demands of occupiers.

Thus, an enormous, potentially destructive stalemate is brewing. Democratizing the Regents is an important way forward.

This report has outlined a meaningful proposal for structural changes in the echelons of the University that have far-reaching consequences. The changes proposed are not mere window dressing, nor token reform that leaves status quo largely intact. The proposal can provide a specific, positive agenda – rather than simply a reaction against cuts – that can unite an emerging movement for public higher education.

Reform of the UC Board of Regents will go a long way to helping renew the UC, but it will not solve all of the system's problems. The campaign to reform the Regents will be more successful if paired with ongoing efforts to garner public support for reinvesting public funds in education and public services more generally.<sup>95</sup> Foremost among these is resolving the annual political impasses over the budget through reforms that making a simple majority vote (rather than the present 2/3 'supermajority') in the legislature sufficient to pass or reject with state financial matters.<sup>96</sup> However, a movement to reinvigorate public funding will only win and be effective with governance reform. This is because, in the wake of repeated scandals and controversies, a significant portion of the California public is loathe to contribute more in taxes to higher education because it views as the UC as elitist, dysfunctional, unaccountable and wasteful.<sup>97</sup> Thus, there is a strong synergy in joint campaigns for public services and governance reform – in tandem, they will mutually strengthen each other.

Governance reform is essential for the UC to flourish as one of the world's top public higher education systems. Because the past, present and future of the UC and California are so tightly interwoven, improving the UC Board will also be complementary to broader processes of reforming California's society, economy and political institutions.

<sup>95</sup> See Glantz and Hays (2009).

<sup>96</sup> See also <http://keepcaliforniaspromise.org/> and <http://www.californiansfordemocracy.com/>

<sup>97</sup> (2009) Poll: Flunking Grades for Governor, Legislature on Higher Education, *California Progress Report*, 11 Nov.; Baldassare et al (2009).

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