

OFFICE OF THE PRESIDENT



NEWS

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UC REGENTS APPROVE DOMESTIC PARTNERS BENEFITS

The University of California Board of Regents today (Friday, Nov. 21) voted 13-to-12, with one abstention, to authorize UC President Richard C. Atkinson to extend health care benefits to the same-sex domestic partners of UC employees and certain other family members who are financially inter-dependent.

The board also voted unanimously to refer to the Office of the President for further review the issue of student housing benefits for domestic partners. The president will report his findings to the board for action.

The measure approved by the board states that "the President be authorized, consistent with his existing authority, to extend health care benefits to University of California employees who are competent adults over the age of 18 in a long-term, committed domestic relationship who are precluded from marriage because they are of the same sex or are incapable under California law of a valid marriage because of family relationship."

Voting in favor of the action were Regents Atkinson, William T. Bagley, Roy T. Brophy, Cruz M. Bustamante, Ward Connerly, Gray Davis, Delaine Eastin, Alice J. Gonzales, Meredith J. Khachigian, Judith Willick Levin, Kathryn T. McClymond, Peter Preuss and Charles Soderquist.

Regents voting against the action were Carol Chandler, Frank W. Clark, Jr., John G. Davies, S. Sue Johnson, John Hotchkis, Howard H. Leach, David S. Lee, S. Stephen Nakashima, Ralph M. Ochoa, Gerald L. Parsky, Tom Sayles and Gov. Pete Wilson.

Regent Velma Montoya abstained.

Atkinson brought the proposal before Regents in July, saying that offering medical, dental and vision care benefits to same-sex domestic partners would strengthen UC's ability to compete for faculty and staff without significantly increasing costs to the university.

Of eight universities UC uses for comparison purposes, four private institutions --

-- more --

Stanford, MIT, Yale and Harvard -- and two of four public universities -- the University of Michigan and SUNY Buffalo -- offer health benefits to domestic partners of employees and retirees.

The university has no means to determine the number of individuals who would apply for domestic partner benefits. Based on the experience of other institutions and businesses, however, estimates of the cost of providing health benefits to same-sex partners would range from \$1.9 million to \$5.6 million a year.

Under the UC plan, partners must sign and file with the university an affidavit declaring that they meet UC's criteria and that they have shared a common residence for at least 12 consecutive months. They also must provide proof of mutual financial support.

A special enrollment period for domestic partner benefits is expected to be held in mid to late spring, with benefits effective sometime mid-year.

In calling for guidelines governing student housing, Atkinson noted that the changing nature of the student community and fluctuations in local housing markets have led students in different kinds of shared living arrangements to request student family housing. These request typically come from undergraduate, graduate and professional students living with domestic partners or blood relatives -- often a parent, brother or sister.

Guidelines should be developed, Atkinson said, that would allow campus chancellors, under their existing authority, to adjust eligibility for student family housing to meet local market conditions and the needs of individual campuses. This would include the accommodation of students living with domestic partners and blood relatives but continue to guarantee first priority for housing to students with children.

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5. REPORT OF THE COMMITTEE ON FINANCE

A. *Amendment of the Budget for Capital Improvements and the Capital Improvement Program*

The Committee reported its concurrence with the recommendation of the Committee on Grounds and Buildings that the 1997-98 Budget for Capital Improvements and the 1997-2000 Capital Improvement Program be amended to include San Diego: A. Gilman Drive Parking Structure.

B. *Domestic Partner Benefits*

The Committee recommended that:

"the policy"

(1) The President be authorized, consistent with his existing authority, to extend health care benefits to University of California employees who are competent adults over the age of 18 in a long-term, committed, domestic relationship who are precluded from marriage because they are of the same sex or are incapable under California law of a valid marriage because of family relationship.

(2) The housing benefit issue be referred to the Office of the President, which should establish, for the Regents' consideration, fundamental principles for acceptance by exception of unmarried students into housing that is normally reserved for married students and/or families. The President should report his findings back to the Board for action.

C. *Amendment of the Budget for Capital Improvements and the Capital Improvement Program, Tom Bradley International Center for Students and Scholars, Los Angeles Campus*

The Committee reported its concurrence with the recommendation of the Committee on Grounds and Buildings that the Budget for Capital Improvements and the Capital Improvement Program be amended as follows:

From: Los Angeles: ~~A. Tom Bradley International Center for Students and Scholars~~ - preliminary plans, working drawings, construction, and equipment - \$10,520,000 to be funded from gift funds (\$4,723,000), external financing (\$4,533,000), and prepaid rent (\$1,264,000).

To: Los Angeles: ~~A. Tom Bradley International Center for Students and Scholars~~ - preliminary plans, working drawings,

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Upon motion of Regent Brophy, duly seconded, the reports and recommendations of the Committee on Finance, with the exception of Item B.(1), were approved, and notice was served on Item H.

Governor Wilson presented the following substitute motion with respect to Item B.(1):

That The Regents direct the President not to proceed with the extension of health care benefits to domestic partners.

The motion failed for lack of a second and was withdrawn by the Governor.

Regent Davis moved approval of Item B.(1) of the C Report. The motion was duly seconded.

Regent Davis stated that he was offended by the midnight appointment of two Regents to the Board, noting that these new Regents did not hear the President's report on domestic partner benefits at the September meeting nor the public comment that occurred at the July and September meetings. He believed that it was inappropriate to ask these new Regents to make a judgment on a proposal that was first brought to the Board in 1981 and to which the Board has given a great deal of attention. Regent Davis recalled that at the July meeting the Board instructed the President to act within his delegated authority and to report back to the Regents at the September meeting. With few exceptions, there were no dissenting opinions from the President's stated intention of extending health care benefits to domestic partners of University employees. At the request of the Governor, however, the matter was brought to The Regents today for a vote. The Lieutenant Governor observed that the recommendation pertains only to health care benefits for dependents of University employees. He believed that such an action was necessary to keep the University competitive and to be fair to all of its employees.

Regent Montoya believed that, because the University's comparison institutions have provided health benefits to domestic partners, the University of California has responded by providing higher compensation to recruit and retain its faculty. She suggested that the proposal was illogical because it would extend benefits to the same-sex domestic partners of retirees, which would not aid in the stated purpose of assisting the University to recruit and retain the most qualified faculty, staff, and graduate students. Regent Montoya stated that she would be willing to vote for the proposal if the benefits were limited to current employees and prospective future retirees.

*amendment
failed
later* →

Regent Paraky recalled that during the discussion by the Committee on Finance some Regents had referred to the values of equality, individual liberty, and the pursuit of individual happiness. He suggested that it would be unfortunate to attach support of those values to a decision on the issue of domestic partner benefits. Regent Paraky believed that the proposal discriminates on the basis of sexual orientation. The law in California permits distinction based upon marital status, but it does not permit discrimination on the basis of sexual

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orientation. Regent Parsky stated that he could not bring himself to support a proposal that does this. He urged the administration to be prepared for a number of challenges along these lines if the recommendation is approved. If the Board votes to reject the proposal, and the administration feels strongly that the current policy with respect to benefits is unfair, then the President should return to the Board with a proposal that is not discriminatory.

Regent Bustamante pointed out that Regent Montoya had intended her statement to be taken as an amendment to the President's recommendation. It was confirmed that this was her intention and that the Speaker had wished to second such a motion.

General Counsel Holst confirmed that the effect of the amended motion would be to extend domestic partner benefits to employees who retire on or after the effective date of the President's action.

Vice President Kennedy stated that under University policy annuitants are provided the same health care benefits as active employees. There are approximately 126,000 people enrolled in the University's health plans, of whom 30,000 are annuitants.

Regent Bagley pointed out that information is not available on how many of the 30,000 annuitants would avail themselves of the new benefit. Regent Davies believed that it would be unwise to pursue Regent Montoya's amendment without having more information.

Governor Wilson observed that Regent Montoya's proposed amendment does not address the concern raised by Regent Parsky. The proposal continues to discriminate, which is in violation of California Labor Code §1102.1. This statute prohibits discrimination in employment based upon sexual orientation. If adopted, the University will be subject to legal challenges similar to the one brought by Mr. Ayyoub against the City of Oakland. Regent Montoya's amendment does not address this problem. The Governor noted that a communication from the Individual Rights Foundation which had been distributed to the Board states that "...the proposed change is already incapable of being made legal by offering domestic partnership benefits to heterosexual couples in that it is doubtful that the Regents have the authority to provide such benefits. As a general principle, 'expenditures by an administrative official are proper only insofar as they are authorized, explicitly or implicitly, by legislative enactment.' I am currently unaware of any authority that allows the Regents to provide employment benefits to domestic partners of its employees." Governor Wilson suggested that any action taken by the Board of Regents would usurp the authority of the Legislature, which the Board cannot legally do.

Regent Davis believed that the University of California is entirely within its right to offer health care benefits to all of its employees and their dependents. He noted that Regent Montoya does not feel that the extension of these benefits to existing retirees speaks to the competitive argument in support of the proposal. The Lieutenant Governor stated that, if the court were to force the University to do so, he would support extending these benefits to

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heterosexual domestic partners, with the understanding that these partners may be asked to contribute the additional cost. In response to the point put forward by the Governor, Regent Davis noted that a number of cities and counties in the State of California offer benefits to domestic partners.

In response to a question from Regent Lee, General Counsel Holst referred to the letter from the Individual Rights Foundation which suggests that The Regents lacks the legal authority to extend benefits to domestic partners based on the lack of legislative authorization. Mr. Holst stated that, in his judgment, that opinion fails to take into account the authority granted to The Regents by Article IX, Section 9 of the State Constitution. It was his opinion that the Board does have the discretion to move forward under its constitutional authority. He recalled that he had written to the members of the Board on several occasions to advise them on his views with respect to same-sex domestic partner benefits. The situation has changed somewhat as a result of Ayyoub v. City of Oakland, which presents the real issue of whether or not benefits must be extended to both same-sex and opposite-sex domestic partners in order to be legally sustainable. The Oakland case increases the risk of exposure, although the law is not absolutely clear. The General Counsel noted that the amendment which the Committee on Finance adopted at its meeting was intended to place the University in a more defensible position. With respect to the proposal put forward by Regent Montoya, he believed that the legal consequences would be neutral.

At the request of Regent Bagley, General Counsel Holst discussed Ayyoub v. City of Oakland, which was heard by a hearing officer whose recommendation was adopted by the Labor Commissioner. The case will now move through the State Department of Industrial Relations. There are remedies in court available to the City if it is unsuccessful with the Department of Industrial Relations.

Governor Wilson noted that, in a letter to Chairman Khachigian, Acting Professor of Law Yoo, Boalt Hall School of Law, had expressed the opinion that the decision of the Labor Commissioner was a correct application of California Labor Code §1102.1. Regent Montoya's proposal does not address the basic problem that the President's proposal seeks to distinguish between employees on the basis of their sexual orientation, which is illegal in the State of California. The Governor suggested that it would be irresponsible for The Regents to make the University a target of litigation.

Regent Bustamante observed that the Oakland case had yet to be adjudicated and asked what the University's legal position would be if, once the proposal is approved, consideration be given to expanding the benefits to all domestic partners. General Counsel Holst confirmed that to do so would remove the potential objection of heterosexual couples. The Speaker stated that he would support a proposal to do so.

In response to the general issues under discussion, Mr. Holst noted that Professor Yoo does not take into account the modification of the proposal that was adopted by the Committee on

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Finance. He noted that the current recommendation would provide benefits to employees who cannot make the choice to marry but who have assumed mutual responsibility in a domestic partner relationship.

Regent Eastin pointed out that extension of domestic partner benefits falls within the delegated authority of the President of the University. It was her opinion that the Board has a responsibility to keep the University of California highly competitive in light of the fact that six of the University's comparison eight institutions have already extended domestic partner benefits. She recalled that two years ago the Board took a position which was opposed by the President and the nine chancellors. Since that time, five chancellors have left the University. She believed that the time had come for the Board to put its political infighting behind it and to act in the best interests of the University by voting in favor of the recommendation.

Regent Hotchkis commented that he was involved in fundraising for the Berkeley and Los Angeles campuses, an effort which is not aided by controversy. He shared the concern regarding potential litigation.

Regent Connerly pointed out that General Counsel Holst has advised that the proposal is not about sexual orientation. He asked whether the Board members would support a proposal that would extend domestic partner benefits to all unmarried employees, which is what the faculty originally proposed.

Regent Parsky responded that if the administration supports such a proposal, then the President should bring such a recommendation to the Board for a full discussion. The recommendation should outline the potential cost of extending domestic partner benefits to all unmarried employees in order to permit the Regents to determine whether or not they are prepared to support funding for this proposal. He emphasized that it would be difficult for him to vote in favor of a proposal that as presently written is discriminatory.

Faculty Representative Dorr recalled that for many years the faculty have supported the extension of benefits to the partners of University employees who are in long-term, committed relationships. The faculty recognize that people in same-sex relationships do not have the ability to marry, whereas a heterosexual couple does have that option. The best understanding of the faculty is that the proposal is legal, especially given the fact that other universities within the State as well as many companies have extended benefits to same-sex domestic partners without serious legal problems. She urged approval of the recommendation.

Regent Ochoa noted that the suggestion had been made that the newly appointed Regents were not prepared to vote on the proposal before the Board. He stressed that he had studied the questions that it raises, including possible legal and legislative issues. Regent Ochoa believed that the University should continue to be committed to the eradication of

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discrimination. It was his belief that the proposal would discriminate against individuals in a committed relationship who had chosen not to marry. He suggested that the Regents were not obliged to turn only to the General Counsel for legal opinions.

Regent Soderquist stated that he relied upon General Counsel Holst for legal advice. He believed that the decision should be made based solely upon whether or not the proposal was in the best interests of the University; for this reason, he intended to vote "yes."

Governor Wilson pointed out that General Counsel Holst had not contradicted any of the concerns raised by Professor Yoo. With respect to the comments made by Regent Davis regarding the appointment of the new Regents, the Governor suggested that if Regent Davis were governor, he would see it as a dereliction of his duty not to ensure that the full complement of Regents was available to vote on this issue.

In response to comments made about discrimination against heterosexual couples, Regent Davis pointed out that it would be possible for the President to return to the Board with a recommendation that extension of benefits to these employees be approved.

(For speakers' comments, see the minutes of the November 21, 1997 meeting of the Committee of the Whole.)

Regent Montoya's amendment ^{to limit the policy to current employees} was put to a vote and failed, Regents Bagley, Brophy, Bustamante, Connerly, Davis, Eastin, Gonzales, Levin, McClymond, Montoya, Preuss, and Soderquist voting "aye," (12), and Regents Atkinson, Chandler, Clark, Davies, Hotchkis, Johnson, Khachigian, Leach, Lee, Nakashima, Ochoa, Parsky, Sayles, and Wilson voting "no" (14).

^{See B.(1) on page 4}
The original motion was put to a vote and passed, Regents Atkinson, Bagley, Brophy, Bustamante, Connerly, Davis, Eastin, Gonzales, Khachigian, Levin, McClymond, Preuss, and Soderquist voting "aye" (13), Regents Chandler, Clark, Davies, Hotchkis, Johnson, Leach, Lee, Nakashima, Ochoa, Parsky, Sayles, and Wilson voting "no" (12), and Regent Montoya abstaining.

6. REPORT OF THE COMMITTEE ON GROUNDS AND BUILDINGS

A. *Amendment of the Budget for Capital Improvements and the Capital Improvement Program*

The Committee recommended that, subject to the concurrence of the Committee on Finance, the 1997-98 Budget for Capital Improvements and the 1997-2000 Capital Improvement Program be amended to include the following project: