

# Exposing the TRUTH AND FICTION of racial data

Racial data is already clouded by the increasing numbers of those who decline to state an ethnic identity and those who are of mixed race. But will voters tell government to stop collecting the information in an upcoming ballot measure?

By Pamela Burdman

**T**he controversies that surround race and racial preferences are never very far from center stage in American public debate. Just this past June, for instance, the United States Supreme Court's most notable decision of 2002-2003 involved racial preference. In *Grutter v. Bollinger et al*, the court reaffirmed a view expressed in a landmark 1978 California case that diversity in education is a worthwhile goal, and thus it allowed the University of Michigan to take race into account when considering admissions to its law school.

Nonetheless, the 5-4 decision in *Grutter* also demonstrated that the court remained troubled and divided on the subject even after a quarter century, for its decision occurred on the 25<sup>th</sup> anniversary of *Regents of the University of California v. Bakke*. In that case, a white student felt he was unfairly denied admission to medical school because slots had been set aside for minority applicants. Although the court ruled in favor of the student, Allan Bakke, it also sanctioned the use of race to achieve student-body diversity. *Bakke*, too, was decided on a 5-4 vote. And in both *Grutter* and *Bakke*, the court's differences were highlighted

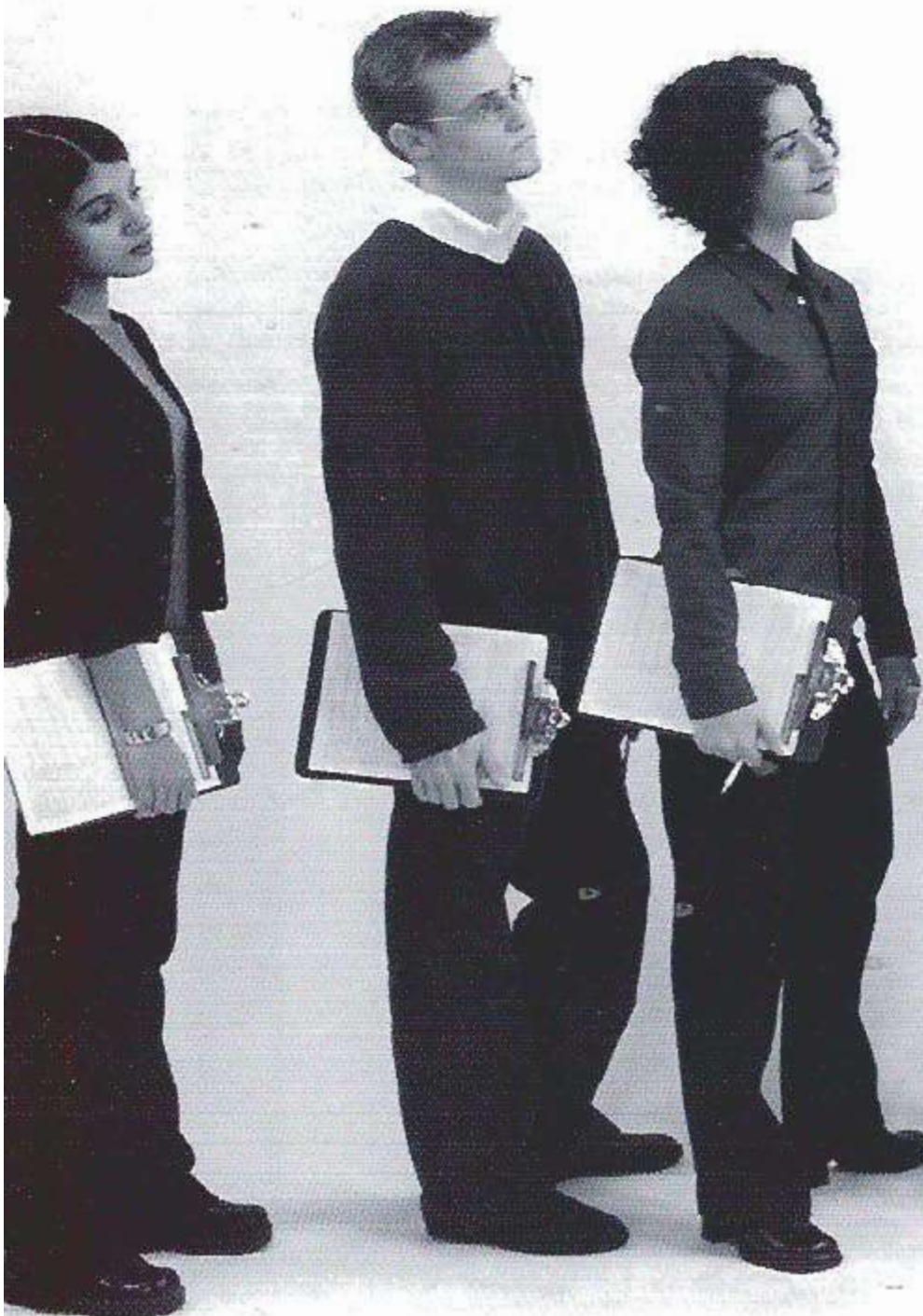




Photo: Corbis

by impassioned dissents.

Although the court narrowly reaffirmed the value of racial diversity, Californians may soon limit the state's ability to keep track of it. At issue is an initiative that would do away with racial checkboxes that confront Californians on a myriad of state documents, from job applications and college enrollment forms to birth and death certificates. The initiative — called the Racial Privacy Initiative (RPI) by its supporters, the Information Ban by its detractors, and Classification By Race, Ethnicity, Color or National Origin by the Secretary of State's Office — is designed to block the state from collecting information about race, ethnicity, color or national origin. It is the brainchild of Ward Connerly, the Sacramento businessman and University of

California regent who led the fight to ban racial preferences at the university in 1995 and later chaired the campaign to pass Proposition 209, the anti-affirmative action initiative passed by voters in 1996.

Connerly's new initiative already has qualified for the California ballot and now awaits an election. It currently is slated for the March 2004 ballot but could go before voters as early as this fall if the recall campaign against Governor Gray Davis qualifies this summer, in time for a special election.

California's existing ban on affirmative action, its tremendous demographic diversity, and its climbing numbers of mixed-race residents combine to raise real questions about how the state collects racial information from its

residents—and even whether it should continue to do so. Unlike affirmative action, however, which has been hotly debated in the country for decades, the controversy over racial classifications involves arcane statistical dilemmas that many Californians wouldn't seriously ponder were a ballot initiative not thrusting those questions to the forefront.

"It's an obvious issue that at some point our society is going to have to debate," said Connerly.

Connerly contends that outmoded racial categories are remnants of the Jim Crow past and the "one-drop" rule, which classifies a person as, say, black if he or she has but "one drop" of African-American blood in his or her ancestry. But many researchers, civil rights advocates and public officials insist that racial statistics are a valuable tool for fighting discrimination, understanding racial disparities and providing services for all Californians.

"If you got rid of that data, you're creating a gigantic hole. California would be this strange anomaly in a broader movement toward actually gathering more data," said John Douglass, senior research fellow at UC Berkeley's Center for Studies in Higher Education.

California has become one of the world's richest sources of racial and ethnic data, particularly in the health field. It is somewhat ironic, however, that the very reasons for California's leadership—an increasing variety of ethnicities and the rise of interracial

marriage—go to the heart of critics' arguments for abolishing the data altogether.

For example, racial-data foes include a large number of mixed-race individuals who understandably chafe at having to choose between their mother's and father's race on forms that only permit one selection. But California is ahead of most of the country in addressing this problem. It was the first state in the nation to provide room on birth certificates for multiple races, allowing parents to write in their answers if none of the boxes applies.

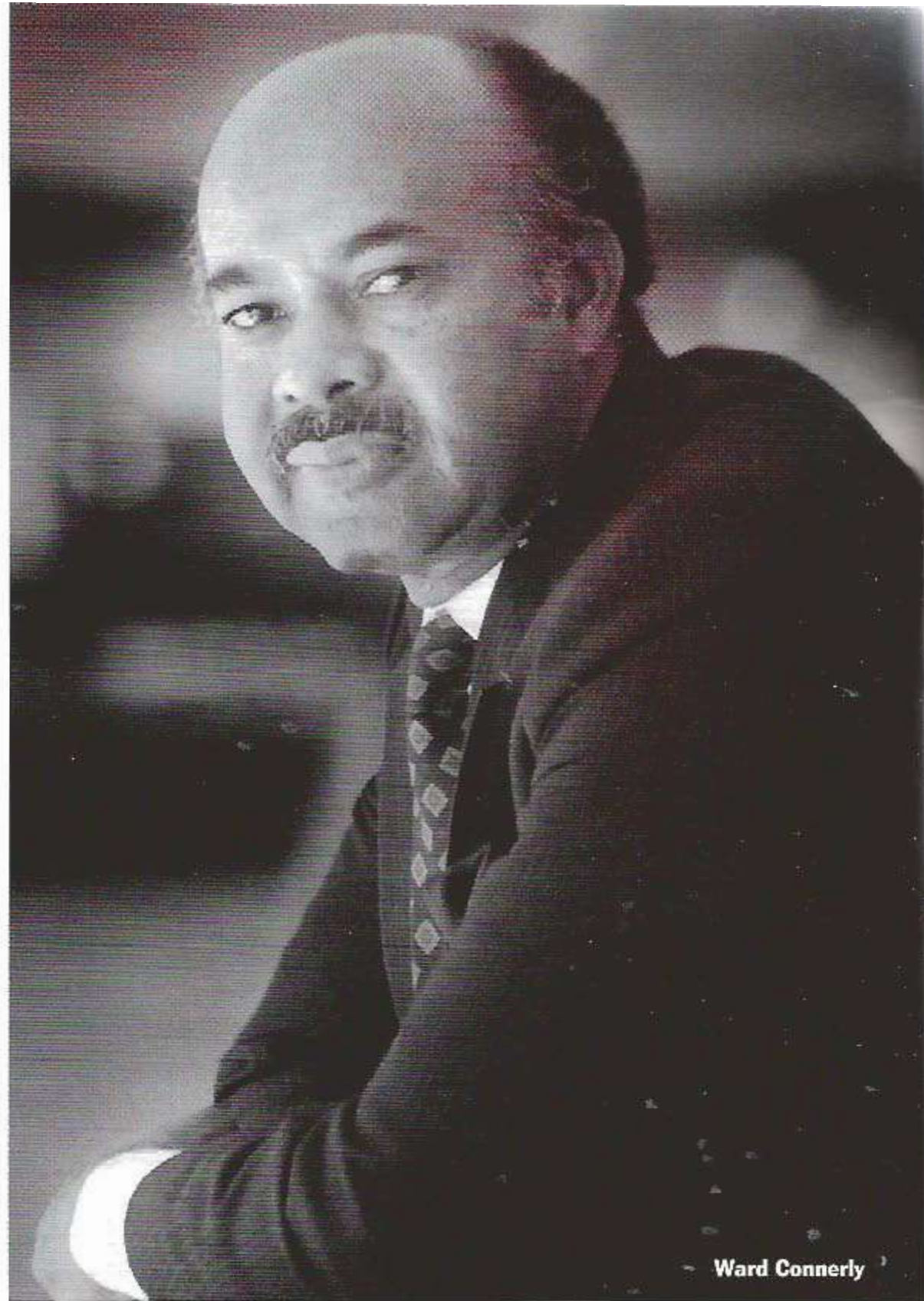
Still, such bureaucratic changes are slow in coming. Not all of California's forms have adopted the multiple-race format, and a federal panel launched in 1994 to evaluate birth certificate standards took six years to release recommendations, and

those have yet to be fully implemented. And clearly, no enhancements to racial data collection invalidate another complaint of data opponents: that the government has no more business querying people about their race than they would about religion or sexual orientation.

It's too early to say whether that argument will prevail with voters. Although a majority agreed with the idea in an April Field Poll, only 11 percent of likely voters had actually heard of the Racial Privacy Initiative. But Connerly's initiative is sure to elevate public discussion about what the state does with racial information.

### Useful data

A random survey revealed that while many federal forms still include only six different racial and ethnic categories, California's various state



Ward Connerly

## The Racial Privacy Initiative

*Amends Article I of the California Constitution to include the following rules:*

- State and local governments "shall not classify any individual by race, ethnicity, color or national origin in the operation of public education, public contracting or public employment."
- Allows the prohibition to be suspended for "compelling state interest" with a two-thirds vote of both houses of the Legislature and approval by the governor.
- Exempted from the prohibition are designated fair housing and employment programs; medical research projects; law enforcement descriptions; prisoner assignments; court-ordered consent decrees and any program where federal funding or regulations require racial classification.
- Prohibition is effective Jan. 1, 2005.

**“Many states don’t collect this information at all. Those that do, probably don’t collect it with the sophistication and volume that California does. It’s the richest such data set in the country, probably in the world.”**

**— David Carlisle, director of the Office of Statewide Health Planning & Development**

agencies use up to 26. That’s one reason that California’s patient discharge data, with about 3.5 million observations a year, has yielded nearly 2,000 scientific articles by researchers around the world, including a wealth of findings on racial and ethnic disparities in health outcomes. Particularly with respect to Asian sub-groups such as Vietnamese, Korean, Filipino and Hmong, only California has enough racial diversity to offer research-ready data.

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For similar reasons, federal officials have helped fund the new California Health Interview Survey, a collaborative effort between UCLA and the state Department of Health Services to analyze access to care. “We found the federal data sources to be really inadequate,” said Rick Brown, director of the UCLA Center for Health Policy. “We couldn’t get good information about racial and ethnic groups in California.” Findings of the California health survey include statistics revealing that Latinos are three times more likely than whites to be uninsured.

If the initiative passes, some racial and ethnic information would survive. Some sources would continue because they are required by the federal government or, like the health survey, receive federal funding. Others would fall under various other exemptions in the initiative, including one that allows law-enforcement officers to use race to identify suspects, and another for medical research sub-

jects and patients. And programs outside of public education, employment and contracting could be exempted by a two-thirds vote of the Legislature.

Because of the thicket of state and federal laws, ambiguities in the initiative’s wording and the certainty of intense litigation if it passes, it’s difficult to predict its impact. Most state offices can’t even produce an exhaustive list of their sources of racial and ethnic information.

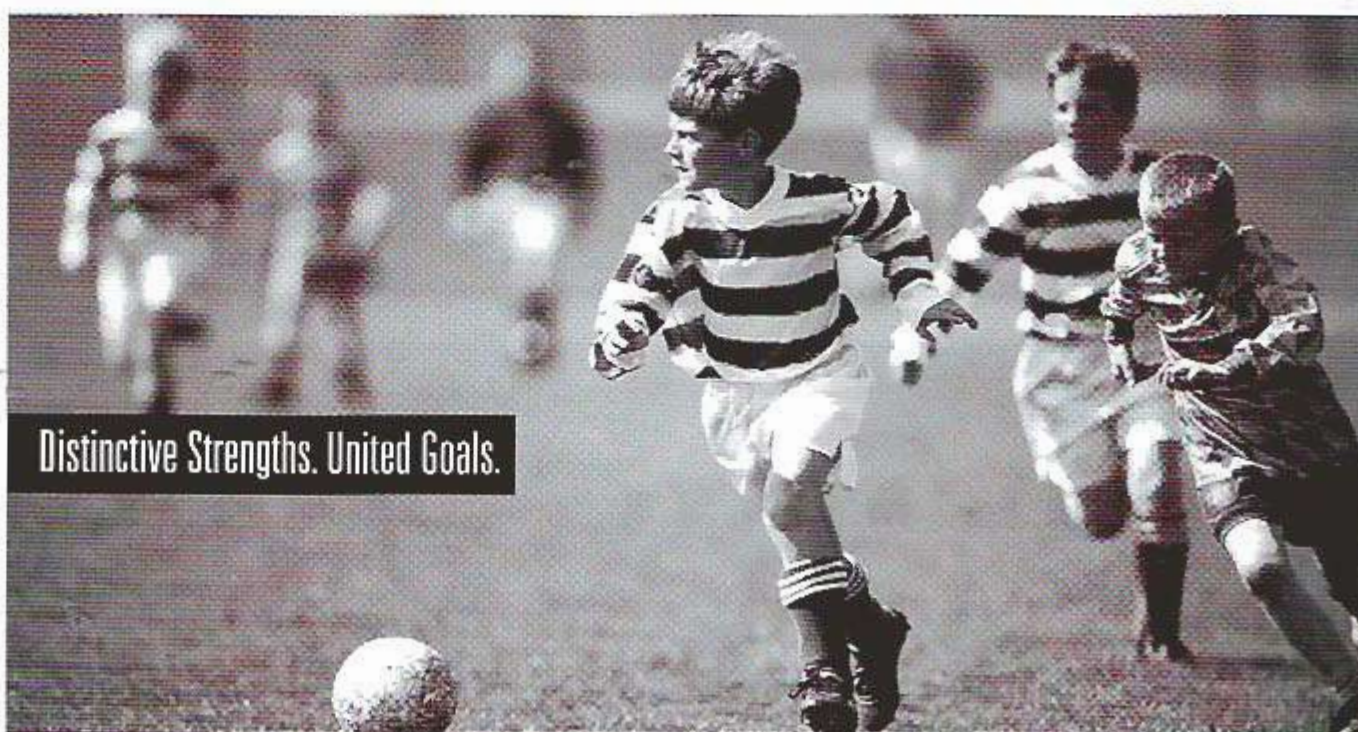
That will change soon.

“The RPI is bringing a lot of questions to the department,” said Sonya Edwards of the Department of Education’s Demographics Unit. “We’re creating an inventory of all the data the department has.” In addition to the Department of Education, the Health and Human Services Agency is surveying its departments, and the California Program on Access to Care is funding a \$46,000 study at UC Berkeley to determine the initiative’s po-

tential effects on health care.

Interviews suggest that a wide range of data sources would be in jeopardy, although the precise impact of the measure is a matter of political debate. The potential impacts that are drawing the most attention include the following:

- **Sources on racial disparities in public health.** Doctors and public health experts say the initiative’s exemption for “medical research subjects and patients” would apply only to individuals participating in clinical studies and to individual patient records. While some health information is federally mandated, vulnerable are state-specific sources such as the hospital discharge data collected by the Office of Statewide Health Planning and Development. It has been used for studies comparing disease prevalence, infant mortality, and other conditions for the purpose of design-



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ing prevention plans.

For this reason, Kaiser Permanente and numerous other health-care organizations oppose the initiative. "Medical practice focuses very much on the numerator of the equation. Each patient represents a collection of genetic information and medical information," said pediatrician Sharon Levine, associate executive director of the Permanente Medical Group. "In order to interpret that and make meaning of it in terms of the impact for the population from which that patient comes, it's critical to have denominator data."

Kevin Nguyen, the Racial Privacy Initiative's official proponent, dismisses the health concerns as "fear-mongering." But Connerly has taken a more moderate stance, promising to join the medical and research communities in seeking clear exemptions from the Legislature if the initiative passes.

• **Racial information on birth and death records.** Like many health databases, vital statistics are a gray area. Although the federal government doesn't specifically mandate the

race question, dropping the checkboxes could violate a contract between California and the Centers for Disease Control, which collects the statistics. Various state officials also use the data. For example, since fertility rates differ by race, the stats help the Department of Finance make population projections used by state agencies to anticipate infrastructure needs such as highways, schools and hospitals, said Mary Heim, chief of the department's demographic research unit.

• **Racial breakdown of applicants and admits to public universities:** The U.S. Department of Education requires universities to report annually on the racial mix of their students. But schools are not required to tell the federal government anything about students who applied and didn't get in, or those who got in but enrolled elsewhere. Without this information, civil rights organizations say they would have no way of documenting discrimination. Even Proposition 209 author Thomas Wood opposes the measure because he says the data is needed to fight reverse discrimination.

But Connerly and other affirmative action opponents maintain that only outlawing the data will ensure that preferences don't enter admissions offices "through the back door."

A recent settlement between UC Berkeley and several civil rights groups would allow the campus to continue gathering this information for the next five years, but the Legislature is barred from making other exemptions within education. The university's Board of Regents voted in May to oppose

the initiative. The California Postsecondary Education Commission may do the same at its July meeting.

• **Race and ethnicity of high school students:** Schools must report students' racial information under the federal "No Child Left Behind" program. However, some wealthy districts in California haven't joined the federal program, so they could be prohibited from recording students' race. Even those schools that still use the race boxes might have to drop categories like Filipino and mixed-race, which are not included in the data dictionary published by the U.S. Department of Education. In another anomaly, the College Board, a national organization that administers tests such as the SAT, would continue to collect student information and aggregate it by race, but the state apparently couldn't use it.

Connerly maintains that the less such data the better. "All of this statistical stuff is not producing any positive results at all, and there is some question about whether it might be doing harm," he said.

• **Financial aid:** Public universities already use race-blind financial aid practices under Proposition 209, but scholarships tied to national origin could be blocked by the initiative. Without a federal requirement to report on students' national origin, \$4 million to \$5 million in scholarship money is at stake, according to Nina Robinson, director of policy and external affairs in UC's Student Academic Services. Connerly suspects that such scholarships are violating Proposition 209 and recommends that any parties wishing to donate such scholarships administer them privately.

• **Academic freedom:** Although Connerly insists that the initiative was not intended to restrict faculty research, concerns about that possibility led UC faculty leaders to unanimously oppose it. In an analysis, UC's lawyer wrote that the impact would hinge on how courts interpret terms such as "the state" and "public education."

• **Racial profiling:** Hate crimes and racial profiling would remain illegal, but law enforcement agencies wouldn't be allowed to collect the data that could show a pattern of racial

## Is racial privacy on the rise?

In 1998, the year the University of California abolished affirmative action in undergraduate admissions, UC officials observed a steep increase in the percentage of students who didn't want to reveal their race. The number has declined since then, but remains much higher than it was under the race-conscious admissions regime.



Source: University of California.  
Note: Numbers are for California residents only.

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**— Henry Der, former deputy superintendent of public instruction and a member of a federal advisory committee on the U.S. Census**

profiling or hate crimes, according to an analysis by graduate students at UC Berkeley’s Goldman School of Public Policy. Initiative backers say under the initiative, the state could allow local governments to acquire the data, but it could not require them to do so.

### **Better methods**

Even if Connerly’s measure fails, the heightened scrutiny could expedite improvements in the way race and ethnic information is collected in California, an outcome that some opponents of the measure agree is

long overdue.

Consistency is one concern. As it stands, the birth certificate lists 20 races, the University of California has 14 options on its application form, and the community college system has 26. With the exception of the U.S. Census, most federal programs still require respondents to check only one of six races, while the UC application and the birth certificate worksheet allow multiple races. At some UC campuses, there is even a form for “change of ethnicity.” State officials have never dictated how agencies should collect

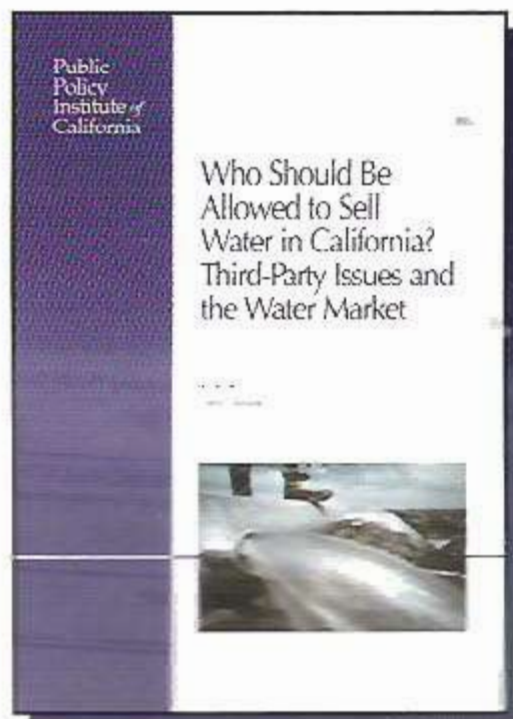
the information, but many are moving toward standardization or adopting the federal guidelines used for the 2000 Census’ transition to a mixed-race questionnaire.

“The collection of racial and ethnic data is not built on science,” said Henry Der, former deputy superintendent of public instruction and a member of a federal advisory committee on the U.S. Census. “It’s a reflection of political and social values that have occurred over time.”

But those values can’t be reflected perfectly. “Hispanic,” for example, is

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a term representing Spanish-speaking people and their descendants. So, a Hispanic person is also black, white or another race. But as U.S. Census offi-

Chinese/white individual is Chinese — exactly the sort of ethnic bean-counting that fuels the campaign for “racial privacy.”

those who reported their race, which nobody really believes. Data experts fear that a broad public attack on racial checkboxes will only lead to

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**— Patrick Perry, California Community Colleges**

cialists discovered when they received many inconsistent answers on their questionnaires, many Hispanics don’t recognize the difference, according to research associate Sonya Tafoya of the Public Policy Institute of California.


As for mixed-race individuals, demographers have convened conferences on how to count them; calling a person half white and half black carries ugly reminders of slavery, when blacks were counted as three-fifths of a person. But if researchers put a mixed-race person in two categories, each person would be double-counted. UC resolves the dilemma through an algorithm that says a black-Chinese individual is considered black, and a

If a defeat of the initiative could lead to better data-gathering, it might also complicate another existing conundrum for racial numbers crunchers: how to track individuals who don’t check any of the race boxes. In 1998, the year affirmative action ended at UC, that group quadrupled to 14.4 percent of all applicants. It has since leveled off at around 8 percent, still high enough for Connerly to point to a groundswell of resistance.

While the trend is to make the checkboxes optional, statistical accuracy is sacrificed for every “decline to state” response. Researchers have no choice but to report large gaps or to assume that the “decline to state” group shares the characteristics of

more non-responses.


“Whether RPI passes or not, it will likely result in an increase of decline-to-state,” said Patrick Perry, vice chancellor of the California Community Colleges. “When folks don’t respond, you have no way of validating who exactly they are.”

If those predictions are correct, Californians, whether voting at the ballot box or with their feet, could render moot state officials’ attempts to provide more accurate racial and ethnic information. 

*Pamela Burdman is a freelance writer and former higher education reporter for the San Francisco Chronicle. Comments may be sent to [comments@statenet.com](mailto:comments@statenet.com).*


## Ethnicity on UC applications

Section 136 of the 2003-2004 Undergraduate and Scholarship Application for the UC system asks for a voluntary indication of an applicant’s ethnic background by checking one of the 14 categories listed below.

**◆ XII. STATISTICAL INFORMATION — ALL APPLICANTS\*** 

Information in Section XII will be used for purposes of statistical analysis only; it is not used in the admissions process and will have no bearing on your admission status. Providing this information is voluntary. See page 16 of booklet for more information.

<p><b>135</b> GENDER</p> <p>(1) <input type="checkbox"/> FEMALE</p> <p>(2) <input type="checkbox"/> MALE</p>	<p><b>136</b> ETHNIC IDENTITY Indicate your ethnic identity by checking the appropriate boxes. See page 16 of booklet for more information.</p> <p>(01) <input type="checkbox"/> AFRICAN-AMERICAN/BLACK</p> <p>(02) <input type="checkbox"/> AMERICAN INDIAN/ALASKA NATIVE PLEASE SPECIFY TRIBAL AFFILIATION <input type="text"/></p> <p>(03) <input type="checkbox"/> CHINESE/CHINESE-AMERICAN</p> <p>(04) <input type="checkbox"/> EAST INDIAN/PAKISTANI</p> <p>(05) <input type="checkbox"/> FILIPINO/FILIPINO-AMERICAN</p> <p>(06) <input type="checkbox"/> JAPANESE/JAPANESE-AMERICAN</p> <p>(07) <input type="checkbox"/> KOREAN/KOREAN-AMERICAN</p> <p>(08) <input type="checkbox"/> MEXICAN/MEXICAN-AMERICAN/CHICANO</p> <p>(09) <input type="checkbox"/> PACIFIC ISLANDER (Includes Micronesian, Polynesian, other Pacific Islanders)</p> <p>(10) <input type="checkbox"/> VIETNAMESE/VIETNAMESE-AMERICAN</p> <p>(11) <input type="checkbox"/> WHITE/CAUCASIAN (Includes Middle Eastern)</p> <p>(12) <input type="checkbox"/> OTHER ASIAN (Not including Middle Eastern) PLEASE SPECIFY <input type="text"/></p> <p>(13) <input type="checkbox"/> OTHER SPANISH-AMERICAN/LATINO (Includes Cuban, Puerto Rican, Central American, South American) PLEASE SPECIFY <input type="text"/></p> <p>(14) <input type="checkbox"/> OTHER PLEASE SPECIFY <input type="text"/></p>
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 **Additional instructions:** “The information requested in this section will be used for statistical analysis only. It will not be used in your admission regulation and will have no bearing on your eligibility for admission. Providing this information is optional.”