

OFFICE OF THE GENERAL COUNSEL

Legal Advisory

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SUMMARY

Fees assessed by the Regents of the University of California are unaffected by the supermajority vote requirement imposed under Proposition 26 approved by voters in November 2010.

If you have any questions about Proposition 26 as it relates to University of California fees, please contact:

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OGC Legal Advisories are issued by the Office of the General Counsel to provide updates regarding important legal and regulatory developments that affect the University. For additional information or assistance with a specific legal matter, please contact the Office of the General Counsel.

UNIVERSITY OF CALIFORNIA FEES NOT SUBJECT TO PROPOSITION 26

On November 2, 2010, California voters passed Proposition 26, a ballot initiative that amends the California Constitution to require that certain “fees” must now be passed by a supermajority – or 2/3 vote – of state or local government. Stated otherwise, the same 2/3 vote required to levy new taxes now also applies to these fees. Significantly, the fees assessed by the Regents of the University of California are not covered by the initiative.

Proposition 26’s stated intent is to (1) prevent the State Legislature and local governments from disguising new taxes as “fees” without complying with the current 2/3 vote constitutional requirement for the adoption of new taxes and (2) more specifically define the term “tax” so that the State Legislature and local governments cannot circumvent the voting restrictions. The initiative, by its express terms, applies only to the State Legislature and to local governmental entities.

The University is unaffected by the initiative in part because it is neither the State Legislature nor a local governmental entity, as defined by the California Constitution. “Local government” is specifically defined as “any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.”

Moreover, fees such as those charged by the University are expressly excluded from Proposition 26’s new definition of “tax.” Under the initiative, all charges or fees are considered to be taxes unless specifically exempted. Proposition 26 specifically exempts charges for services provided by State entities, including:

- Charges imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of conferring the benefit or granting the privilege to the payor.
- Charges imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of providing the service or product to the payor.

The tuition and fees assessed by the University generally meet the requirements of these exemptions: they are imposed directly on payors, who receive a direct benefit not generally available to non-payors (e.g., instruction and degree credit), at a price reflecting the reasonable costs to the University.